

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2209.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2210.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2211.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,

Appellees.

Transcript of Record

VOLUME XII.

(Pages 4225 to 4573 Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

Nos. 2209, 2210 AND 2211.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
vs.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,
Appellant,
No. 2209.
Appellees.

THE UNITED STATES OF AMERICA,
vs.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,
Appellant,
No. 2210.
Appellees.

THE UNITED STATES OF AMERICA,
vs.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,
Appellant,
No. 2211.
Appellees.

Transcript of Record.

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(Pages 4225 to 4573 Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,
vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,
Appellees.

Transcript of Record.

VOLUME XII.
(Pages 4225 to 4573, Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

In the Circuit Court of the United States for the District of Idaho, Northern Division.

No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KITTIE E. DWYER, POTLATCH LUMBER COMPANY, ROBERT O. WALDMAN,

Defendants.

Bill in Equity.

To the Honorable, the Judges of the Circuit Court of the United States for the District of Idaho:

The United States of America, the complainant in the above-entitled cause, by George W. Wickersham, the Attorney General of the United States of America, files this, the said complainant's original bill of complaint against the persons hereinabove, in the caption hereof, named as defendants.

The said complainant respectfully represents to this Court:

I. That prior to the acts hereinafter complained of, the complainant was the owner of the lands hereinafter described, the said lands constituting a [1*] part of the public lands of the United States and being situated within the State and District of Idaho, and within the jurisdiction of this Court.

That by an act of Congress of the United States, entitled, "An Act for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory," approved June 3, 1878, as amended and extended to all public land States by the Act of Congress of August 4, 1892, it was provided, among other things, in substance that surveyed public lands of the United States within the public land States, valuable chiefly for timber but unfit for cultivation might be sold to citizens of the United States or persons who had declared their intention to become such, in quantities not to exceed 160 acres to any one person or association of persons, at the minimum price of Two Dollars and Fifty Cents (\$2.50) per acre.

It was further provided in said Act as follows:

"That any person desiring to avail himself of the provisions of this Act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivision the particular tract of land he desires to purchase, setting forth that the

*Page-number appearing at foot of page of original certified Record.

same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; containing no mining or other improvements, except for ditch or canal purposes where any such do exist, save such as were made by or belong to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this Act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself." [2]

Which statement was required by said act to be verified by the oath of the applicant before the register or receiver of the land office within the district where the land was situated.

And said act further provides that:

"If any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury and shall forfeit the money which he may have paid for said lands and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void."

And said act further provides that after the expiration of 60 days' publication of said application:

"The person desiring to purchase shall furnish to the register of the land office satisfactory evidence * * * that the land is of the character contemplated in this Act, unoccupied and without improvements other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper or coal; and upon payment to the proper officer of the purchase money of said land, together with the fees of the register and receiver, * * * the applicant may be permitted to enter said tract, and, on the transmission to the General Land Office of the papers and testimony in the case, a patent shall issue thereon."

Said act further provided that effect should be given to its provisions by regulations to be prescribed by the Commissioner of the General Land Office.

II. That pursuant to the authority given by said Act, the Commissioner of the General Land Office prescribed and promulgated certain regulations to give effect to the provisions of said Act, among other, the following:

That after the expiration of the 60 days' publication, the person desiring to purchase the land described in his application to purchase should under oath, make answer to certain questions as follows:
[3]

"Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agree-

ment or contract in any way or manner, with any person whomsoever by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself?"

And

"Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?"

And

"Has any other person than yourself, or has any firm, corporation, or association, any interest in the entry you are now making, or in the land, or in the timber thereon?"

Also the following:

"Did you pay out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?"

And

"Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?"

III. That heretofore, to wit, on the first day of July, in the year 1902, and at divers other times before and after that day, and before the making of the several entries hereinafter mentioned and designated, in the State of Idaho, William F. Kettenbach, George H. Kester, Clarence W. Robnett, William Dwyer, who are hereinbefore and in the caption of this bill named as defendants, and who are among the defendants

to this cause, did unlawfully and corruptly combine, conspire, confederate and agree together, and with each other and with divers other persons, some of whom are hereinafter named and others of whom are to the complainant unknown, and did form, make and enter into an unlawful, corrupt and fraudulent [4] conspiracy, combination and agreement with each other and with the other persons aforesaid, for the purpose and to the end of defrauding the complainant of the title and ownership of divers large tracts of public land then owned by the complainant and lying in the district of public lands subject to entry at the land office of the United States located at Lewiston in the State of Idaho, and for the purpose and to the end of defrauding the complainant out of the use, occupation and possession of the said tracts of public land; and for the purpose and to the end of defrauding the United States by acquiring from the United States, through and by means of the act of Congress approved on June 3, 1878, hereinbefore mentioned, for themselves and for each of themselves, the title to large bodies of timber lands, then being public lands and the property of the United States, in area and to an amount much greater than the area and the amount which they, the said defendants, individually or collectively, could lawfully, and in accordance with the provisions of the said statute, acquire; and for the purpose and to the end of defrauding the United States by causing and procuring divers and many other persons severally to make entries of, and to purchase from the United States, under and in professed accordance with the pro-

visions of the said statute, divers and many tracts of public land, then being the property of the United States, they, the said defendants, then and there, intending and designing afterwards to acquire from the said other persons the said lands so to be entered and purchased by the said other persons, and intending and designing to cause and procure the said lands to be entered and purchased in the interest and for the ultimate benefit and advantage of themselves, the said [5] defendants, whereby, and in and by which procurement, with the intent aforesaid, the provisions of the said statute should be abused and perverted and the true intent and purpose of the said statute should be defeated; and for the purpose of accomplishing the said ends and of defrauding the United States by divers fraudulent and unlawful means, that is to say, by means of false, fraudulent and unlawful entries to be made of the aforesaid tracts of public land at the land office aforesaid, and by means of perjury, the subornation of perjury, the procurement of false swearing, and by means of other falsehoods, false pretenses and misrepresentations, whereby the officers of the United States should be deceived and imposed upon and should be induced and procured to divest the United States of its title to the said lands and to convey the said title of the United States to divers persons not lawfully entitled thereto contrary to the laws of the United States and for the benefit, advantage and profit of the said defendants.

IV. That as a part of the said conspiracy and agreement so far as aforesaid made and entered into by the said defendants hereinbefore named, and as

a part of the said unlawful and fraudulent means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the times and the place aforesaid by the said defendants, mutually agreed, designed and contemplated that they, the said defendants, should persuade, employ and otherwise induce and procure a large number of other persons severally to purchase and to make entries of divers tracts of the public lands aforesaid under and in pretended and apparent accordance with the aforesaid [6] act of Congress approved on June 3, 1878, as amended by the act of Congress approved on August 4, 1892; that before the said other persons should file the sworn statements by that statute prescribed, or should apply to enter and purchase such lands or should otherwise take any steps or initiate any proceedings to that end, and before the making of such entries and purchases, and as a means of persuading and inducing the said other persons to make such entries and purchases, the said defendants should make and enter into certain agreements, contracts and understandings with the said other persons, severally, whereby and by the terms of which agreements, contracts and understandings, the said defendants or some of them, should agree and contract to buy of the said other persons, severally, and the said other persons, severally should agree and contract to sell to the said defendants, or to some of them, the respective tracts so to be entered and purchased by the said other persons when and so soon as the said other persons should obtain from the United States the titles to the said tracts by them to

be entered and purchased, or shortly thereafter; that, thereupon and after the making of such unlawful contracts and agreements, and while the same should subsist and continue, the said defendants should cause and procure the said other persons severally to apply at the land office aforesaid to make entries of and to purchase divers tracts of the said public lands in professed accordance with the statutes aforesaid, and should cause and procure each of the said persons so applying, at the time of making his application to enter, and in connection with and as a part of such application, to execute, sign, make oaths to [7] and file in the said land office a sworn statement of the character, substance, tenor and purport prescribed by the said act of Congress approved on June 3, 1878, which act is hereinbefore mentioned, stated and in part recited, in which statement such applicant should declare and on his oath represent, among other things, that he, the said applicant, did not apply to purchase the land by him applied for on speculation, but in good faith to appropriate the same to his own exclusive use and benefit, and that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself, the said defendants intending, designing and contemplating that each of the said other persons so to be induced to make such applications and to file such sworn statements should in doing so commit and be guilty

of wilful and corrupt perjury, and should swear falsely and corruptly, and should defraud the United States, and fraudulently deceive and impose upon the officers of the said land office and upon other officers of the United States charged with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be induced to make such applications should, before the making of his said application and the filing of his said sworn statement, as the said defendants intended and contemplated, have made with the said defendants or some of them the agreement and contract aforesaid, by the terms of which such person so to make application should have agreed to sell to the defendants or to some [8] of them, and the defendants or some of them should have agreed to buy, the land and the title which such person should acquire from the United States by means of the application and entry by him to be made.

V. That as a further part of the said conspiracy and agreement so as aforesaid made and entered into by the said defendants hereinbefore named, and as a further part of the unlawful and fraudulent means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the time and the place aforesaid by the said defendants, mutually agreed, designed and contemplated that they, the said defendants, should cause and procure the said other persons, hereinbefore mentioned and such who were, as aforesaid, to be induced to apply to enter and purchase the tracts of public lands aforesaid, to make

such publication and advertisement as are prescribed by the statute hereinbefore mentioned and in part recited, and after such publication and after the period of sixty days by the said statute prescribed, to appear before the proper officer or officers of the said land office and to make such proof before the said officers as is prescribed by the said statute, and then and there to answer on oath and in writing the interrogatories which were as aforesaid prescribed by the Commissioner of the General Land Office to be propounded to all persons seeking to make entries of public lands under the statute hereinbefore mentioned; and it was intended, designed and contemplated by the said defendants that each of the said other persons so appearing and answering should, in answer to the said interrogatories when the same should be propounded to him, on his oath declare, represent and swear, among other things, that he had not, since the making of the sworn statement previously as aforesaid made [9] and filed by him in applying to make entry, sold or transferred his claim to the land sought by him to be entered; and that he, the said applicant, had not, at the time of his appearing and answering the said interrogatories, directly or indirectly made any contract or agreement or contract in any way or manner, with any person whomsoever, by which the title sought by such applicant to be acquired might inure, in whole or in part, to the benefit of any person except himself; and that he, the said applicant, was at the time last aforesaid making his intended entry in good faith for the appropriation of the land ex-

clusively to his own use and not for the use and benefit of any other person; and that no other person than himself, the said applicant, and that no firm, corporation or association, had at the time last aforesaid, any interest in the said entry or in the land sought to be entered or in the timber upon the said land; the said defendants intending, designing and contemplating that each of the said other persons so to be caused and procured to answer the said interrogatories in the manner and to the effect last stated should in doing so commit and be guilty of wilful and corrupt false swearing, and should swear falsely and corruptly, and should defraud the United States, and should fraudulently deceive and impose upon the officers of the United States charged with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be induced to make the proofs and to answer the interrogatories aforesaid in the manner and to the effect aforesaid should, as the said defendants intended and contemplated, before the making of such proofs and answers, have made and entered into the [10] contracts and agreements hereinbefore stated, which contracts were to be, at the time last aforesaid, still continuing and subsisting, by which the title to be by him acquired should inure to the benefit of the said defendants or of some of them, and by which the said defendants or some of them should have an interest in the land and the title so to be acquired, and by reason of which contract and agreement such person seeking to make entry did not do so in good

faith to appropriate such land to his own exclusive use and benefit, but for the use and benefit of the said defendants or some of them.

VI. That as a further part of the said conspiracy and agreement so as aforesaid made and entered into by the said defendants hereinbefore named, and as a further part of the unlawful means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the times and the place aforesaid, by the said defendants, mutually agreed, designed and contemplated that they, the said defendants, after having procured the other persons hereinbefore mentioned to make applications to enter the lands hereinbefore mentioned in the manner and under the circumstances aforesaid should furnish and advance to each of the said persons so much money as should be necessary to enable such person to pay to the proper officers of the United States the amount of money prescribed by law to be paid upon the making of the entry by such person to be made, and that the sum so by the defendants advanced should be deducted from the amount agreed to be paid by them to such person as the purchase price of the land by him entered; and it was further intended and contemplated by the said defendants [11] that they should cause and procure each of the said other persons, who were to be induced to make entries as aforesaid, when such person should appear before the proper officers of the aforesaid land office to answer the interrogatories hereinbefore mentioned and set out, to declare on oath in answer to said interrogatories that he, the

said person then applying to make entry, had paid out of his own individual funds all the expenses in connection with the filing by him made; and that he expected to pay for the land by him sought to be entered with his own money; and that the money with which he intended to pay for the said land was derived by him from other sources than the defendants, and that he had had the said money in his actual possession for a longer period than in fact he had so had the same; the said defendants mutually intending, designing and contemplating that each of the said other persons, so to be caused and procured so to answer the said interrogatories should in doing so commit and be guilty of wilful and corrupt false swearing, and should swear falsely and corruptly and should defraud the United States, and should fraudulently deceive and impose upon the officers of the United States concerned with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be caused and procured to answer the said interrogatories in the manner and to the effect aforesaid should, as the said defendants intended and contemplated, before the making of such answers, have received from the said defendants or from some of them the money by him to be used in the purchase of the land sought by him to be entered, and should not pay or intend or expect to pay for the said land out of his own individual funds or with his own money, [12] and should not pay or intend or expect to pay the expenses of his filing and entry out of such funds

or money, and should moreover, swear falsely and fraudulently in respect of other matters the subject of such interrogatories.

VII. That thereafter, that is to say, after the formation and making of the said unlawful conspiracy and agreement so as aforesaid made and entered into by the said defendants hereinbefore named, and at divers times in the State of Idaho, in pursuance and execution of the said conspiracy and for the purpose of effecting the said unlawful purpose thereof, the said defendants, or some of them, did make and enter into fraudulent, corrupt and unlawful contracts, agreements, arrangements and understandings with a large number of persons, severally, that is to say, with William B. Benton, Joel H. Benton, George W. Harrington, Van V. Robertson, John W. Killinger, John E. Nelson, Soren Hansen, James C. Evans, Pearl Washburn, Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Drury M. Gammon, Guy L. Wilson, Frances A. Justice, Edna P. Kester, Elizabeth Kettenbach, William J. White, Elizabeth White, Mamie P. White, Martha E. Hallett, Daniel W. Greenburg, David S. Bingham, William McMillan, Hattie Rowland, William E. Helkenberg, William Haevernick, Alma Haevernick, Geary Vanartsdalen, Robert O. Waldman, Rowland A. Lambdin, Ivan R. Cornell and Fred W. Shaeffer, Joseph B. Clute, severally, and with divers other persons who are to the complainant now unknown, but whose names, when the same shall be discovered, the complainant prays

leave to add to this bill by proper amendment, and to seek appropriate relief in respect of the lands by them fraudulently [13] obtained from the complainant; that, in and by the said unlawful contracts, agreements, arrangements and understandings so as aforesaid made by the said defendants with the said other persons, each of the said other persons severally agreed and arranged with the said defendants or with some of them that he or she would make an entry and purchase of a tract of the public land of the United States under and in pretended and apparent accordance with the aforesaid act of Congress approved on June 3, 1878, as amended on August 4, 1892, and would, upon obtaining title to the said tract from the United States, convey the said title and tract to the defendants or to some of them or, at the direction and for the benefit of the said defendants, to some other person or to some firm or body corporate to be by the said defendants designated; and the said defendants, or some of them, acting for all, agreed, contracted and arranged that they would pay to each of the said other persons a certain sum of money for the tract of land by him or her so to be entered and by way of recompense to such person for his or her costs, labor and trouble incurred in acquiring title to the said tract from the United States; and the said defendants further agreed and promised to furnish and advance to each of the said other persons so much money as might be necessary to enable him or her to pay for such land to defray the other expenses incident to the obtaining of title to such land

from the United States.

VIII. That thereupon, that is to say, at divers times after the making by the said defendants as aforesaid [14] of the unlawful, corrupt and fraudulent agreements, contracts, arrangements and understandings with the said William B. Benton, Joel H. Benton, George W. Harrington, Van V. Robertson, John W. Killinger, John E. Nelson, Soren Hansen, James C. Evans, Pearl Washburn, Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Drury M. Gammon, Guy L. Wilson, Frances A. Justice, Edna P. Kester, Elizabeth Kettenbach, William J. White, Elizabeth White, Mamie P. White, Martha E. Hallett, Daniel W. Greenburg, David S. Bingham, William McMillan, Hattie Rowland, William E. Helkenberg, William Haevernick, Alma Haevernick, Geary Vanartsdalen, Robert O. Waldman, Rowland A. Lambdin, Ivan R. Cornell, and Fred W. Shaeffer, Joseph B. Clute named in the last paragraph hereof, the said defendants, in pursuance and execution of the aforesaid unlawful and fraudulent conspiracy, and to effect the aforesaid unlawful purposes thereof, and in accordance with and in pursuance of the mode, scheme, method and means hereinbefore set out and stated to have been by them mutually agreed upon, designed and contemplated, and in pursuance of and in accordance with the said unlawful, corrupt and fraudulent agreement, stated in the last preceding paragraph hereof to have been made and entered into by and between the said defendants and the said

other persons, named in the last paragraph, did, at divers times, unlawfully, corruptly and fraudulently cause, induce and procure the said William B. Benton, Joel H. Benton, George W. Harrington, Van V. Robertson, John W. Killinger, John E. Nelson, Soren Hansen, James C. Evans, Pearl Washburn, Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Drury M. Gammon, Guy L. Wilson, [15] Frances A. Justice, Edna P. Kester, Elizabeth Kettenbach, William J. White, Elizabeth White, Mamie P. White, Martha E. Hallett, Daniel W. Greenburg, David S. Bingham, William McMillan, Hattie Rowland, William E. Helkenberg, William Haevernick, Alma Haevernick, Geary Vanartsdalen, Robert O. Waldman, Rowland A. Lambdin, Ivan R. Cornell and Fred W. Shaeffer, Joseph B. Clute, severally to apply at the said land office of the United States located at Lewiston in the State of Idaho to purchase a tract of public land, then the property of the complainant, under the provisions of the aforesaid act of Congress approved on June 3, 1878, as amended by the act of Congress approved on August 4, 1892, and in pretended and apparent accordance with the provisions and requirements of the said acts, the said defendants then and at all times thereafter well knowing that the said applications so made by the said other persons, and the entries so by the said other persons sought and intended to be made, were and would be false, fraudulent, illegal and invalid by reason of the fact, hereinbefore stated, that each of the said applications was

made and each of the said entries was sought and intended to be made in accordance with and in pursuance of an unlawful, corrupt and fraudulent agreement, theretofore as aforesaid made and then and thereafter subsisting, whereby the person so applying and seeking to enter each tract had agreed to sell to the said defendants or, at the direction and for the benefit of the said defendants, to some other person or to some firm or body corporate to be by the said defendants, designated, such tract upon the acquisition by him from the United States of title thereto, and the said defendants had agreed to buy the said tract and the said title. [16]

IX. And the said defendants hereinbefore named, in further pursuance of the aforesaid conspiracy, and further to effect the said unlawful purposes thereof, and further in pursuance of, and in accordance with the said scheme, mode, method, and means theretofore as aforesaid by them mutually agreed upon, designed and contemplated, and in further pursuance of and further in accordance with the unlawful, corrupt and fraudulent agreements theretofore as aforesaid made by them with the said William B. Benton, Joel H. Benton, George W. Harrington, Van V. Roberston, John W. Killing, John E. Nelson, Soren Hansen, James C. Evans, Pearl Washburn, Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Drury M. Gammon, Guy L. Wilson, Frances A. Justice, Edna P. Kester, Elizabeth Kettenbach, Will-

iam J. White, Elizabeth White, Mamie P. White, Martha E. Hallett, Daniel W. Greenburg, David S. Bingham, William McMillan, Hattie Rowland, William E. Helkenberg, William Haevernick, Alma Haevernick, Geary Vanartsdalen, Robert O. Waldman, Rowland A. Lambdin, Ivan R. Cornell, Fred W. Shaeffer, Joseph B. Clute, hereinbefore named, did also, at divers times, cause, induce and procure the said William B. Benton, Joel H. Benton, George W. Harrington, Van V. Robertson, John Killinger, John E. Nelson, Soren Hansen, James C. Evans, Pearl Washburn, Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Drury M. Gammon, Guy L. Wilson, Frances A. Justice, Edna P. Kester, Elizabeth Kettenbach, William J. White, Elizabeth White, Mamie P. White, Martha E. Hallett, Daniel W. Greenburg, David S. Bingham, William McMillan, Hattie Rowland, [17] William E. Helkenberg, William Haevernick, Alma Haevernick, Geary Vanartsdalen, Robert O. Waldman, Rowland A. Lambdin, Ivan R. Cornell, Fred W. Shaeffer, Joseph B. Clute, and each of them, severally to appear before the officers of the aforesaid land office and each of them in connection with and as a part of his or her application to purchase a tract sought to be by him or her entered, to make, subscribe, make oaths to and file in the said land office, a written statement of the character, substance, tenor and purport prescribed by the aforesaid statute to be filed by persons desiring to avail themselves of the provisions thereof, and did cause, induce, and procure the said

persons, and each of them, then and there to make and subscribe their respective written statements as aforesaid, and to state respectively in substance that he, the applicant, did not apply to purchase the land described in his said statement, on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract or in any way or manner with any person or persons whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself; which said respective applications and each of them were then and there duly filed in the said United States Land Office.

X. And the said defendants hereinbefore named, in further pursuance of the aforesaid conspiracy, and further to effect the said unlawful purposes thereof, and further in pursuance of and in accordance with the said scheme, mode, method and means theretofore as aforesaid by them mutually agreed upon, designed and contemplated, [18] did also at divers times furnish and advance to divers and several of the said other persons hereinbefore named, and stated to have been induced and procured by the said defendants to make unlawful and fraudulent entries of public lands, divers and considerable sums of money for the purpose of enabling such other persons to purchase, and pay for the lands by them respectively sought to be entered and upon the agreement and with the understanding

made and had with each of such persons that the money so furnished was by way of advancement upon the purchase price theretofore agreed to be paid to such person by the said defendants for the land to be entered and acquired by such person and was to be applied by such person to the purchase of, and the payment for, the tract by him to be entered, the said defendants, then and at all times thereafter, designing, intending and expecting that each of the said persons so receiving such sums of money should and would, when he or she should be questioned upon the subject by the officers of the aforesaid land office, deny and conceal from the said officers the fact that he or she had received such money from the said defendants, and should and would, in answer to the interrogatories to be propounded by the said officers, falsely and fraudulently state, on his or her oath, in writing, that he or she had obtained the said money from other persons or by other means, for the purpose and to the end that the said officers and the other officers of the United States concerned and charged with the administration of the laws governing the disposal of the public lands might and should thereby be deceived, imposed upon and fraudulently misled, and so prevented from [19] further inquiry, investigation and consideration concerning such entries, whereby the truth and the facts hereinbefore stated might be discovered and the fraudulent character of the several transactions disclosed, and that the said officers might and should thereby be fraudulently and mistakenly caused to believe that such entries were lawful and

honest and so to be induced to approve the said entries and to cause patents to be issued thereon, conveying to the several said persons the tracts by them respectively entered.

XI. That, thereafter, pursuant to said unlawful and corrupt conspiracy, combination, confederation and agreement, and in furtherance thereof and to carry out and effect the object and purpose thereof the said defendants hereinbefore named did induce and procure the said other persons hereinbefore named, and each of them, to appear before the officers of the said land office of the United States at Lewiston, Idaho, and to answer the certain interrogatories hereinbefore in this complaint set out, prescribed by the Commissioner of the General Land Office, pursuant to the authority contained in the act aforesaid; and each of the said persons then and there by the procurement of the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett did answer said questions in substance and to the effect that he had not sold or transferred his claim to the land for which he made application to purchase since making his sworn statement, or had directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which he might acquire from the Government of the United [20] States might inure in whole or in part to the benefit of any person except himself and that he made his entry in good faith for the appropriation of the land exclusively to his own use and not for the use or benefit of any other person, that no other person than himself, nor

any firm, corporation or association had any interest in the entry which he was then making, or in the land or in the timber thereon, that he paid out of his own individual funds all the expenses in connection with making said filing and entry, and that he expected to pay for the land with his own money, the said person so answering being in so doing guilty of false and fraudulent swearing, and intending to deceive and impose upon, and actually deceiving and imposing upon, the said officers of the said land office, and the answers so by such persons made being false and fraudulent, in this that the said persons had, in truth and in fact, theretofore severally agreed and contracted as aforesaid, with the said defendants hereinbefore named to sell to the said defendants the titles by the said other persons sought to be acquired, and had made agreements whereby such titles should inure to the benefit of the said defendants, and did not make the said entries in good faith for the appropriation of the lands by them severally sought to be entered to their own exclusive use, respectively, and did not severally pay out of their own individual and respective funds all the expenses in connection with the said filings and entries, and did not severally expect to pay for the lands by them respectively entered with their own moneys, and the said answers being in divers other respects and particulars false, fraudulent, untrue and deceitful; and being intended to deceive, defraud and mislead, and actually deceiving, defrauding and [21] misleading, the said officers of the said land office and the other officers of the United States charged with and concerned in

the administration of the laws providing for the disposal of the public lands of the United States.

XII. That at the divers and several times hereinbefore referred to, the said William B. Benton and the other persons hereinbefore named and stated to have made and entered into certain unlawful, corrupt and illegal agreements, arrangements and understandings with the said defendants hereinbefore named, severally did apply to enter, and did make entries of divers tracts of public land of the United States subject to disposal at the aforesaid land office, and each of the said persons did consequently and in the usual course of administration of the public laws, obtain from the United States a patent whereby the United States conveyed to each of the said persons, severally, the tracts by him or her entered, that is to say, that the said

WILLIAM B. BENTON, on the twenty-seventh day of August, 1902, made his application to enter and, on the 21st day of November, 1902, did make entry of the tract of land described as the south half of the northwest quarter, and the north half of the southwest quarter, of section fifteen, in township thirty-nine north of range three east, Boise meridian, and, thereafter, on the 25th day of February, 1904, a patent was issued by the United States conveying to the said William B. Benton the tract last aforesaid; and the said

JOEL H. BENTON, on the 28th day of August, 1902, made his application to enter and, on the 21st day of November, 1902, did make entry of the tract of land described as the south half of the southwest

quarter, and [22] the south half of the southeast quarter, of section fifteen, in township thirty-nine north of range three east, Boise meridian, and, thereafter, on the 25th day of February, 1904, a patent was issued by the United States, conveying to the said Joel H. Benton the tract last aforesaid; and the said

GEORGE W. HARRINGTON, on the 21st day of November, 1902, made his application to enter and, on the 11th day of February, 1903, did make entry of the tract of land described as the west half of the northwest quarter, the northeast quarter of the northwest quarter, and the northwest quarter of the northeast quarter, of section ten, in township thirty-six north of range five east, Boise meridian, and, thereafter, on the second day of July, 1904, a patent was issued by the United States conveying to the said George W. Harrington the tract last aforesaid; and the said

VAN V. ROBERTSON, on the 25th day of February, 1903, made his application to enter and, on the 19th day of May, 1903, did make entry of the tract of land described as the southwest quarter of section ten, in township thirty-nine north of range three east, Boise meridian; and, thereafter, on the 3d day of August, 1904, a patent was issued by the United States conveying to the said Van V. Robertson the tract last aforesaid; and the said

JOHN W. KILLINGER, on the 24th day of February, 1903, made his application to enter and, on the 22d day of May, 1903, did make entry of the tract of land described as the north half of the southwest quarter, and the north half of the southeast quarter,

of section thirteen, in township thirty-nine north of range two [23] east, Boise meridian, and, thereafter, on the 3d day of August, 1904, a patent was issued by the United States, conveying to the said John W. Killinger the tract last aforesaid; and the said

JOHN E. NELSON, on the 24th day of February, 1903, made his application to enter, and, on the 22d day of May, 1903, did make entry of the tract of land described as the northeast quarter of section twenty-four, in township thirty-nine north, of range two east, Boise meridian, and, thereafter, on the 3d day of August, 1904, a patent was issued by the United States conveying to the said John E. Nelson the tract last aforesaid; and the said

SOREN HANSEN, on the 28th day of February, 1903, made his application to enter and, on the 5th day of June, 1903, did make entry of the tract of land described as the southeast quarter of section ten in township thirty-nine north of range three east, Boise meridian, and, thereafter, on the 3d day of August, 1904, a patent was issued by the United States, conveying to the said Soren Hansen the tract last aforesaid; and the said

JAMES C. EVANS, on the 24th day of March, 1903, made his application to enter and, on the 17th day of June, 1903, did make entry of the tract of land described as the south half of the northwest quarter, and the west half of the southwest quarter, of section twenty-five, in township thirty-nine north, of range three east, Boise meridian, and, thereafter, on the 3d day of August, 1904, a patent was issued by the

United States, conveying to the said James C. Evans the tract last aforesaid; and the said

PEARL WASHBURN, on the 19th day of January, 1903, [24] made her application to enter, and on the 16th day of April, 1903, did make entry of, the tract of land described as the east half of the southeast quarter, and the southeast quarter of the northeast quarter, of section twenty-seven, in township forty north of range four east, Boise meridian, and, thereafter, on the 2d day of July, 1904, a patent was issued by the United States conveying to the said Pearl Washburn the tract last aforesaid; and the said

LON E. BISHOP, on the 24th day of March, 1903, made his application to enter, and, on the 17th day of June, 1903, did make entry of, the tract of land described as the west half of the southeast quarter, and the south half of the southwest quarter, of section twenty-three, in township thirty-nine north, range three east, Boise meridian, and, thereafter, on the 3d day of August, 1904, a patent was issued by the United States, conveying to the said Lon E. Bishop the tract last aforesaid; and the said

FREDERICK W. NEWMAN, on the 25th day of March, 1903, made his application to enter, and on the 17th day of June, 1903, did make entry of, the tract of land described as the south half of the northeast quarter, and the east half of the southeast quarter, of section twenty-three, in township thirty-nine north of range three east, Boise meridian, and, thereafter, on the 3d day of August, 1904, a patent was issued by the United States, conveying to the said

Frederick W. Newman the tract last aforesaid; and the said

CHARLES DENT, on the 2d day of April, 1903, made his application to enter, and, on the 23d day of June, 1903, did make entry of the tract of land described [25] as the north half of the northeast quarter, and the north half of the northwest quarter, of section fourteen, in township thirty-nine north of range three east, Boise meridian, and, thereafter, on the 3d day of August, 1904, a patent was issued by the United States conveying to the said Charles Dent the tract last aforesaid; and the said

CHARLES SMITH, on the 2d day of April, 1903, made his application to enter, and, on the 23d day of June, 1903, did make entry of, the tract of land described as the northwest quarter of the southwest quarter, of section fourteen, the southeast quarter of the northeast quarter, and the north half of the southeast quarter of section fifteen, in township thirty-nine north of range three east, Boise meridian, and, thereafter, on the 3d day of August, 1904, a patent was issued by the United States, conveying to the said Charles Smith the tract last aforesaid; and the said

GEORGE MORRISON, on the 31st day of March, 1903, made his application to enter and, on the 26th day of June, 1903, did make entry of the tract of land described as the northeast quarter of section twenty-two in township thirty-nine north of range three east, Boise meridian, and, thereafter, on the 3d day of August, 1904, a patent was issued by the United States, conveying to the said George Morri-

son the tract last aforesaid; and the said

EDWARD M. HYDE, on the 31st day of March, 1903, made his application to enter, and on the 26th day of June, 1903, did make entry of, the tract of land described as the northwest quarter of section twenty-two, in township thirty-nine north of range three east, Boise meridian, and, thereafter, on the 3d day of August, [26] 1904, patent was issued by the United States, conveying to the said Edward M. Hyde the tract last aforesaid; and the said

DRURY M. GAMMON, on the 12th day of May, 1903, made his application to enter and, on the 19th day of August, 1903, did make entry of, the tract of land described as the southeast quarter of the southeast quarter, of section twenty-six, and the southwest quarter of the southwest quarter, of section twenty-five, and the north half of the northeast quarter, of section thirty-five, all in township forty north of range three east, of Boise meridian, and, thereafter, on the 9th day of September, 1904, patent was issued by the United States conveying to the said Drury M. Gammon the tract last aforesaid; and the said

GUY L. WILSON, on the 25th day of April, 1904, made his application to enter, and, on the 13th day of July, 1904, did make entry of, the tract of land described as lots three and four, the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter, of section nineteen, in township thirty-nine north of range five east, Boise meridian, and, thereafter, on the 31st day of December, 1904, patent was issued by the United States, conveying to the said Guy L. Wilson the tract

last aforesaid; and the said

FRANCES A. JUSTICE, on the 25th day of April, 1904, made her application to enter and, on the 13th day of July, 1904, did make entry of the tract of land described as lots three and four, and the east half of the southwest quarter of section nineteen, in township thirty-eight north of range six east, Boise meridian, and, thereafter, [27] on the 31st day of December, 1904, a patent was issued by the United States conveying to the said Frances A. Justice the tract last aforesaid; and the said

EDNA P. KESTER, on the 25th day of April, 1904, made her application to enter, and, on the 13th day of July, 1904, did make entry of, the tract of land described as the north half of the northeast quarter, and the north half of the northwest quarter, of section fourteen, in township thirty-eight north of range five east, Boise meridian, and, thereafter, on the 31st day of December, 1904, patent was issued by the United States conveying to the said Edna P. Kester the tract last aforesaid; and the said

ELIZABETH KETTENBACH, on the 25th day of April, 1904, made her application to enter and, on the 14th day of July, 1904, did make entry of the tract of land described as the west half of the northeast quarter, and the west half of the southeast quarter, of section thirteen, in township thirty-eight north of range five east, Boise meridian, and, thereafter, on the 31st day of December, 1904, a patent was issued by the United States conveying to the said Elizabeth Kettenbach the tract last aforesaid; and the said

WILLIAM J. WHITE, on the 25th day of April, 1904, made his application to enter, and, on the 14th day of July, 1904, did make entry of the tract of land described as the south half of the northwest quarter, and the south half of the northeast quarter, of section fourteen, in township thirty-eight north of range five east, Boise meridian, and, thereafter, on the 31st day of December, 1904, a patent was issued by the United States conveying to the said William J. White the tract last aforesaid; and the said [28]

ELIZABETH WHITE, on the 25th day of April, 1904, made her application to enter, and, on the 14th day of July, 1904, did make entry of, the tract of land described as the south half of the northwest quarter, and the south half of the northeast quarter, of section twenty-three, in township thirty-eight north of range five east, Boise meridian, and, thereafter, on the 31st day of December, 1904, patent was issued by the United States conveying to the said Elizabeth White the tract last aforesaid; and the said

MAMIE P. WHITE, on the 25th day of April, 1904, made her application to enter, and, on the 14th day of July, 1904, did make entry of, the tract of land described as the north half of the southwest quarter, and the north half of the southeast quarter, of section fourteen, in township thirty-eight north of range five east, Boise meridian, and, thereafter, on the 31st day of December, 1904, a patent was issued by the United States conveying to the said Mamie P. White the tract last aforesaid; and the said

MARTHA E. HALLETT, on the 25th day of April, 1904, made her application to enter, and, on

the 15th day of July, 1904, did make entry of, the tract of land described as lots one and two and the east half of the northwest quarter, of section nineteen, in township thirty-eight north of range six east, Boise meridian, and, thereafter, on the 31st day of December, 1904, a patent was issued by the United States conveying to the said Martha E. Hallett the tract last aforesaid; and the said [29]

DANIEL W. GREENBURG, on the 25th day of April, 1904, made his application to enter, and, on the 15th day of July, 1904, did make entry of, the tract of land described as the southwest quarter of section seventeen, in township thirty-nine north of range five east, Boise meridian, and, thereafter, on the 31st day of December, 1904, a patent was issued by the United States conveying to the said Daniel W. Greenburg the tract last aforesaid; and the said

DAVID S. BINGHAM, on the 25th day of April, 1904, made his application to enter, and, on the 15th day of July, 1904, did make entry of, the tract of land described as the southeast quarter of section seventeen in township thirty-nine north of range five east, Boise meridian, and, thereafter, on the 31st day of December, 1904, a patent was issued by the United States conveying to the said David S. Bingham the tract last aforesaid; and the said

WILLIAM McMILLAN, on the 25th day of April, 1904, made his application to enter, and, on the 18th day of July, 1904, did make entry of, the tract of land described as the southeast quarter of section twenty-one in township thirty-nine north of range five east, Boise meridian, and, thereafter, on the 31st

day of December, 1904, a patent was issued by the United States conveying to the said William Mc-Millan the tract last aforesaid; and the said

HATTIE ROWLAND, on the 25th day of April, 1904, made her application to enter, and, on the 18th day of July, 1904, did make entry of, the tract of land described as the southeast quarter of the northwest quarter, the south half of the northeast quarter, and the northeast quarter of the southeast quarter of section fifteen, [30] in township thirty-eight north of range five east, Boise meridian, and, thereafter, on the 31st day of December, 1904, a patent was issued by the United States conveying to the said Hattie Rowland the tract last aforesaid; and the said

WILLIAM E. HELKENBERG, on the 26th day of October, 1904, made his application to enter, and, on the 20th day of January, 1905, did make entry of, the tract of land described as the northwest quarter of the southwest quarter, of section twenty-eight, and the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter, of section twenty-nine, in township thirty-nine north of range five east, Boise meridian, and, thereafter, on the 29th day of May, 1907, a patent was issued by the United States conveying to the said William E. Helkenberg the tract last aforesaid; and the said

WILLIAM HAEVERNICK, on the 27th day of October, 1903, made his application to enter, and, on the 6th day of January, 1904, did make entry of, the tract of land described as the southeast quarter of the southeast quarter, of section twenty-three, and the northeast quarter of the northeast quarter, of

section twenty-six in township thirty-seven north of range two east, Boise meridian, and, thereafter, on the 1st day of November, 1904, a patent was issued by the United States conveying to the said William Haevernick the tract last aforesaid; and the said

ALMA HAEVERNICK, on the 27th day of October, 1903, made her application to enter, and, on the 6th day of January, 1904, did make entry of, the tract of land described as the southwest quarter of the northeast [31] quarter, of section twenty-six, in township thirty-seven north of range two east, Boise meridian, and, thereafter, on the first day of November, 1904, a patent was issued by the United States conveying to the said Alma Haevernick the tract last aforesaid; and the said

GEARY VAN ARTSDALEN, on the 31st day of October, 1903, made his application to enter, and, on the 11th day of January, 1904, did make entry of, the tract of land described as the northeast quarter of section twenty-five, in township thirty-seven north of range five east, Boise meridian, and, thereafter, on the 1st day of November, 1904, a patent was issued by the United States, conveying to the said Geary Van Artsdalen the tract last aforesaid; and the said

ROBERT O. WALDMAN, on the 6th day of March, 1903, made his application to enter, and, on the 25th day of May, 1903, did make entry of, the tract of land described as lots two, three, six and seven, of section thirty, in township thirty-eight north of range two east, Boise meridian, and, thereafter, on the 3d day of August, 1904, a patent was issued by the United States conveying to the said

Robert O. Waldman, the tract last aforesaid; and the said

ROWLAND A. LAMBDIN, on the 25th day of April, 1902, made his application to enter, and, on the 22d day of July, 1902, did make entry of, the tract of land described as the southwest quarter of section twenty-nine, in township forty-two north of range one west, Boise meridian, and, thereafter, on the 28th day of January, 1904, a patent was issued by the United States conveying to the said Rowland A. Lambdin the tract last aforesaid; and the said [32]

IVAN R. CORNELL, on the 19th day of June, 1903, made his application to enter, and, on the 10th day of September, 1903, did make entry of, the tract of land described as lots six and seven, and the east half of the southwest quarter of section twenty-seven, in township forty north of range one west, Boise meridian, and, thereafter, on the 9th day of September, 1904, a patent was issued by the United States conveying to the said Ivan R. Cornell the tract last aforesaid; and the said

FRED W. SHAEFFER, on the 6th day of May, 1902, made his application to enter, and, on the 25th day of July, 1902, did make entry of, the tract of land described as the east half of the northwest quarter, the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter, of section twenty-seven, in township forty north of range one west, Boise meridian, and, thereafter, on the 28th day of January, 1904, a patent was issued by the United States conveying to the said Fred W.

Shaeffer the tract last aforesaid.

JOSEPH B. CLUTE, on the 24th day of March, 1903, made his application to enter and on the 17th day of June, 1903, did make entry of the tract of land described as the south half of the northeast quarter and the east half of the southeast quarter of section twenty-six, in township thirty-nine north of range 3 east, Boise meridian, and thereafter, on the third day of August, 1904, a patent was issued by the said United States, conveying to the said Joseph B. Clute, the tract last aforesaid. [33]

XIII. That each of the said persons so making entry of and obtaining title to the tract by him or her entered, did apply to make and did make such entry, and did prosecute and carry on the proceedings, at the solicitation and instigation of the said defendants, being moved and stimulated thereto by the advice, request and promises of the said defendants hereinbefore named, and therein acting upon, in pursuance of, and in accordance with the unlawful, corrupt and fraudulent agreement, arrangement and understanding theretofore made and entered into as aforesaid between him or her and the said defendants, which said agreement, arrangement and understanding continued and subsisted throughout the whole of the said proceedings, whereby it had been and was agreed that the said defendants should buy from each of the said persons, and each of the said persons should sell and convey to the said defendants, or, at the direction and for the benefit of the said defendants, to some other person or to some firm or body corporate to be by the said defendants desig-

nated, the tract and the title by him or her to be acquired from the United States.

XIV. And the complainant further avers that each of the persons mentioned in the last preceding paragraph hereof and stated to have made entries, severally, of certain tracts of public land, in connection with his or her application to make entry of such land, and as a part of the said application, and as a necessary and material step in the proceedings to obtain a patent for the land by him or her sought to be entered, did file in the said land office a written statement, of the character, substance, tenor and purport prescribed by the Act of Congress aforesaid, wherein such person did, on his or her oath, falsely, fraudulently and deceitfully [34] swear in substance that he or she was not applying to purchase the tract of land by him or her sought to be speculation, but in good faith to appropriate the same to his or her own exclusive use and benefit, and that he or she had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she should acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself or herself, whereas in truth and in fact each of the said persons was applying to enter the tract by him or her sought to be entered upon speculation, and not for his or her own exclusive use and benefit, and had made an unlawful and fraudulent agreement with the said defendants hereinbefore named, as aforesaid, whereby the title by him or her to be acquired

should inure to the use and benefit of the said defendants or, at the direction and for the benefit of the said defendants, to some other person or to some firm or body corporate to be by the said defendants designated; and the said statements so made by the said persons and each of them were known by the said persons and by each of them, and were known by the said defendants, to be false, untrue, fraudulent and deceitful.

XV. And the complainant further avers that each of the said persons hereinbefore named and stated to have made the entries hereinbefore mentioned and designated, did, in the course of the said proceedings had and prosecuted by them as aforesaid, appear before the officers of the aforesaid land office and did, on his or her oath and in writing, make answers to the several interrogatories which had been as aforesaid prescribed by the Commissioner of the General Land Office [35] to be propounded to persons seeking to make entries under the aforesaid Act of Congress, which said interrogatories are hereinbefore set out, and which were propounded to each of the said persons; and in so making answer to the said interrogatories, each of the said persons did, upon his or her oath in writing, falsely, fraudulently and deceitfully declare and swear that he or she had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he or she might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself or herself, and that he or she

was so making the entry by him or her offered to be made in good faith for the appropriation of the land sought to be entered exclusively to his or her own use and not for the use or benefit of any other person, and that no other person than the said person so offering to enter, and no firm, corporation or association, had any interest in the said entry or in the land sought to be entered or in the timber standing upon the said land; whereas in truth and in fact each of the said persons had, as aforesaid, theretofore made and entered into the agreement hereinbefore stated with the said defendants, which agreement was then still continuing and subsisting, whereby each of the said persons so seeking to make entry had agreed to sell the land by him to be entered to the said defendants or some of them, or, at the direction and for the benefit of the said defendants, to some other person or to some firm or body corporate to be by the said defendants designated; and the title to be acquired by each of said persons was to inure to the benefit of the said defendants; and the [36] said answers so made by the said persons to the said interrogatories were by the said persons and by the defendants known to be false and fraudulent.

XVI. And the complainant further avers that several of the said persons named in the seventh paragraph hereof and therein stated severally to have made entries of divers tracts of public land, did, before the time they appeared at the aforesaid land office to make the proof required by the statute aforesaid and to answer the interrogatories hereinbefore mentioned as required to be answered by them, re-

ceive and accept from the said defendants hereinbefore named, or some of them, certain sums of money, which sums were furnished and advanced to the said persons by the said defendants or some of them, in pursuance of and in accordance with the unlawful and fraudulent agreements and arrangements hereinbefore stated and alleged to have been made between the said defendants and the said other persons, whereby the said defendants were to advance to the said other persons such money as should be necessary to enable such other persons to pay for and purchase the several tracts by such other persons respectively to be entered and purchased; and the said sums of money were by the said defendants furnished, and by the said other persons received and accepted, for the purpose of enabling the said other persons to make entries of, and to pay for, the several tracts of public land intended to be entered by such other persons, and upon a mutual agreement and understanding in each case that such money was to be so used and applied by the recipient thereof; and the said persons so receiving the said sums of money did use the same for the purpose aforesaid, and each of the said persons did, in making his or her entry, pay to the officers of the said land office the purchase [37] price required by law to be paid for the land entered and purchased by such person, and did pay the other expenses by him or her incurred in the said proceeding, with the said money obtained and derived from the said defendants, or some of them, and not with money belonging to the person making the entry or derived and obtained

from other persons than the defendants. Nevertheless, each of the said persons, who had as aforesaid received the said sums of money from the said defendants, when he or she appeared at the said land office to make such proofs and to answer such interrogatories as have been hereinbefore mentioned and stated, did, in answer to those of the said interrogatories relating to the subject, on his or her oath, in writing, falsely, fraudulently and deceitfully swear and declare, in substance, that he or she intended to pay and was about to pay the purchase price required by law as aforesaid out of funds and with money belonging to him or her, and being his or her individual property, and did untruly, falsely and deceitfully state and represent that he or she had obtained such money from other persons and other sources than the said defendants.

Wherefore, and by reason of the said false, fraudulent and deceitful representations so made by the said persons seeking to make entries of the said lands, the officers of the United States concerned in the proceedings were deceived and imposed upon, and were caused to believe that the entries so offered to be made were honest and valid entries; whereas, had the said officers been by the said other persons truly informed and apprised of the fact that the several sums of money so paid for the purchase of the said lands were the property of the defendants in this cause and had been advanced as aforesaid [38] by the said defendants, the said officers would have been caused to make, and it would have been their duty to make, further inquiry and investigation concerning the said

proposed entries and the transactions connected therewith, and to give further consideration to the said entries and transactions connected therewith, and to give further consideration to the said entries and transactions, with the result that the facts hereinbefore stated would have been discovered, the fraudulent character of the several transactions hereinbefore set forth would have been discovered, and the making of the illegal, invalid and fraudulent entries sought by the said defendants and the said other persons to be made would have been prevented.

XVII. And the complainant further avers that, by reason of the facts hereinbefore stated, and by reason of the unlawful conspiracy among the said defendants hereinbefore named, the unlawful agreements between the said defendants and the said other persons who made the entries herein enumerated and designated, the perjury procured by the said defendants and committed by the said other persons in the procurement of the said entries, and the false swearing, misrepresentations and concealment of material facts committed and practiced by the said persons, and of the other matters which are hereinbefore set out, the said entries, and each of them were unlawfully made, and were and are illegal, fraudulent and invalid, and that the United States was and is defrauded thereby; and that, by reason of the said facts, the officers of the United States, charged with the administration of the laws providing for and governing the disposal of the public lands, and concerned in the transactions [39] herein stated, were deceived, defrauded, misled, and imposed upon, and

caused to allow the said entries to be made, and induced to approve the said entries and to issue patents thereon; and that the said patents, by reason of the said facts, are invalid, and are voidable at the suit of the United States, as having been procured by fraud, perjury, misrepresentation and imposition and in violation of law, and as having been issued and granted under fraudulent imposition and mistake of fact, and in fraud of the United States.

XVIII. And complainant further avers and charges that the said defendants, William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, by their aforesaid several unlawful, corrupt and fraudulent schemes and practices, and by and through the various persons heretofore, in this bill of complaint, mentioned as employed by them for that purpose, fraudulently obtained and procured the patents of complaint to be issued to the various persons hereinbefore in this bill of complaint mentioned in connection with the several descriptions of said lands mentioned and set out. And your complainant further avers and charges that the said pretended patents to the lands heretofore described were procured, as the defendants, William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, and each of them, well knew at the time of procuring the same, in violation of the laws of the United States. And your complainant further avers and charges that in the case of each and every of such tracts of land in this bill of complaint described, the acts and conduct of the said defendants, William F. Kettenbach, George H. Kester, [40] William

Dwyer and Clarence W. Robnett, and each of them, and each and every of their employees and confederates, were illegal and fraudulent, and that the patents procured from this complainant by and on behalf of said defendants, were and are, in each and every instance, fraudulent, invalid and voidable as against this complainant, and contrary to equity and good conscience, and being so, and the titles purporting to be conveyed thereby being vested in certain of the said defendants, the said patents ought to be vacated, set aside, avoided and for naught held.

XIX. And the complainant avers and charges that the patents so unlawfully and fraudulently procured from complainant by and on behalf of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, for the several tracts of land in this bill of complaint mentioned and described were issued by this complainant in each and every instance, within six years of the filing of this bill of complaint.

XX. The complainant further avers that, at divers times after the making of the several entries hereinbefore mentioned, designated, and alleged to have been severally made by the several persons hereinbefore named and alleged to have made such entries, the said defendants hereinbefore named did, pursuant to the said unlawful conspiracy, agreement and arrangement theretofore formed and then existing among themselves, as aforesaid, and in accordance with the plan and design of the said conspiracy and to effect the object thereof, induce, cause and procure certain of the said several other persons hav-

ing made the said entries, severally and by divers conveyances, to convey the respective tracts of land by such [41] persons severally entered, according to the direction and for the profit and benefit of the said defendants hereinbefore mentioned, to divers persons and bodies corporate designated by the said defendants, the said persons to whom such conveyances were made being in some instances one or more of the defendants themselves, and in other instances such conveyances being made to persons or bodies corporate who and which were fully advised and informed of the premises hereinbefore stated and set out, and who and which received the said conveyances and held the lands and the titles thereto thereby to them respectively conveyed with notice and knowledge that the said lands had been entered and the titles thereto acquired from the United States in the unlawful, corrupt and fraudulent manner hereinbefore alleged in respect of the said lands, and that the said titles were invalid, obtained in fraud of the law, and voidable at the suit of the United States; and that, in several instances, after the making of the aforesaid several conveyances to the divers persons and bodies corporate aforesaid, the said defendants hereinbefore mentioned, in further pursuance and execution of the conspiracy, agreement and arrangement theretofore, as aforesaid, formed and then existing among themselves, and further to effect the object thereof, did themselves, by divers and several conveyances, convey the lands and the titles so as aforesaid theretofore to them conveyed and by them held to certain bodies corporate, and in certain sev-

eral other instances did induce, cause and procure the said persons hereinbefore mentioned as having received from the several entrymen conveyances of divers tracts of the said lands to convey by several conveyances the said lands by them so held and the said titles [42] by such prior conveyances vested in them to certain other persons or to certain bodies corporate, which said persons and bodies corporate so ultimately receiving such conveyances and the said titles were fully informed and advised of the premises hereinbefore stated and set out, and who and which received the said conveyances and the said lands, and now hold the said lands and the titles thereto so as aforesaid acquired and to them thereby conveyed, with notice and knowledge that the said lands had been entered and the titles thereto acquired from the United States in the unlawful, corrupt and fraudulent manner hereinbefore alleged in respect of such lands, and that the said titles were invalid, obtained in fraud of the law, and voidable at the suit of the United States.

Whereby, it results that, of the lands hereinbefore mentioned, designated and alleged to have been entered by divers persons in pursuance of the unlawful arrangements made and existing between the said persons severally and the defendants hereinbefore named, the titles to certain tracts are held under patents issued by the United States, as aforesaid, by the said persons so having made entries of such tracts; and the titles to certain other tracts are held by divers other persons to whom the persons so having made entries have directly conveyed as afore-

said; and the titles to the residue of the said tracts are held by divers other persons to whom such titles have been ultimately conveyed after certain mesne conveyances executed by the said persons originally making entries as aforesaid to certain intermediate transferees.

XXI. And the fact is, as the complainant avers, that in each and every of the cases and the transactions herein mentioned, designated, alleged and set out, the [43] entry was made corruptly, unlawfully, and in fraud of the United States, and in pursuance of and in accordance with the unlawful, corrupt and fraudulent contracts, agreements and arrangements hereinbefore stated and alleged as having been made and as existing between the said several persons so severally making entries and the said defendants hereinbefore named, and that the said entry and the conveyance or the conveyances of the land thereby entered subsequently thereto made were made at and by the request, procurement, instance, instigation and direction of the said defendants hereinbefore named, and in pursuance of, in accordance with, and as parts of, the conspiracy hereinbefore stated and alleged to have been formed and to have existed by and among the said defendants; and that all the persons concerned and acting in the said entries, conveyances and others of the said transactions, as parties thereto in any capacities, did so act, whether as entrymen or as direct or indirect transferees of the several titles, with full knowledge, notice, information and advice of and concerning the facts hereinbefore alleged. and well

knowing that the said entries and the titles issued thereupon were unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States; and that those persons and bodies corporate by whom or by which the said titles are now, as the result of the various transactions aforesaid, held did receive and now hold the said titles, by them respectively held, with the full knowledge, notice, information and advice aforesaid; and that such persons and bodies corporate, being the present holders, respectively, of the said lands and the said titles thereto, and being therefore named as defendants to this bill, hold the said lands and titles either, as in some instances, in [44] secret trust for the defendants heretofore named and for the use and benefit and subject to the control and direction of the said defendants, or, as in other instances, as purchasers of the said lands and titles having purchased the same with notice and knowledge of the unlawful manner aforesaid in which such lands had been entered and of the illegality and invalidity of such titles; the said present holders of the said lands, being defendants hereto additional to those hereinbefore named, being severally named and the several tracts by them respectively held, and the manner by which such persons acquired the said tracts, being stated and set forth in the next paragraph hereof.

XXII. And the complainant, accordingly, and for the sake of greater distinctness and particularity in respect of the averments made in the two last preceding paragraphs hereof, shows the manner in which and the persons and the bodies corporate to

whom and to which the various several tracts of land hereinbefore mentioned and described were and have been, respectively, conveyed, as is in the said paragraphs alleged, and the several persons and bodies corporate by whom and by which the said lands and the titles thereto are now held, conveyances and other transactions in the said paragraphs alleged, described and charged to be fraudulent in the manner and in the respects therein set out, being as follows, that is to say:

The said James C. Evans, Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Guy L. Wilson, Daniel W. Greenburg, David S. Bingham, and William E. Helkenberg, having as aforesaid made entries severally of divers several tracts of public [45] land, which tracts are hereinbefore severally described in connection with the names of the said persons, respectively making entries thereof, did thereafter severally convey the said tracts and such titles as were so by them, respectively, acquired to the defendants hereinbefore named, William F. Kettenbach and George H. Kester; and thereafter the said Kettenbach and Kester, by their several deeds of conveyance in which they were joined by their respective wives, did convey the said several tracts of land to the defendants, The Idaho Trust Company, a body corporate, organized and existing under and in virtue of the laws of the State of Idaho, by which said body corporate the said lands and the titles thereto are now held, the said corporate defendant having taken the said titles without the payment of

any valuable or other consideration therefor and with notice and knowledge of the invalidity, as aforesaid, of the said titles, and holding the same in trust for and to the use of the said defendants conveying the same.

The said William McMillan and the said Hattie Rowland, hereinbefore named and alleged severally to have made entries of tracts of public land, did thereafter severally convey the said tracts by them respectively entered, and the titles by them respectively so obtained, to one Kittie E. Dwyer; and the said Kittie E. Dwyer did afterwards, by several deeds of conveyance, convey the said tracts to the defendant, the Idaho Trust Company, each of the said conveyances so made by the said Kittie E. Dwyer being subject to a mortgage previously made and given by the said Kittie E. Dwyer to the defendant, The Lewiston National Bank.

And the said lands and the titles thereto are [46] now held by the defendant the Idaho Trust Company, the said body corporate defendant having taken the said titles without the payment of any valuable or other consideration therefor, and with notice and full knowledge of the invalidity as aforesaid of the said titles and holding the same in trust for and to the use of the said defendants, Kester, Kettenbach, Dwyer and Robnett, or some of them.

The said Van V. Robertson, hereinabove named and alleged to have made entry of a tract of public land, hereinabove described in connection with his name, did thereafter convey the said tract and the title by him so acquired to the defendant, the Lewis-

ton National Bank, of Lewiston in the State of Idaho, a body corporate organized and existing under and in virtue of the laws of the United States relative to National Banks; and the said Drury M. Gammon, hereinabove named, did convey the land hereinabove described and alleged to have been by him entered, to the defendant hereinbefore named, Clarence W. Robnett, and the said Robnett did thereafter convey the said tract to the said defendant, the Lewiston National Bank, by which body corporate the said titles herein alleged to have been conveyed to it are now held, the said defendant bank having taken the said titles without the payment of any consideration therefor, and with notice and knowledge of the invalidity, as aforesaid, of the said titles, and holding the same in trust for and to the use of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, or some of them.

The said William B. Benton and the said Joel H. Benton, hereinabove named and alleged to have severally made entries of certain described tracts of public land, did thereafter severally convey the said tracts to the said defendant Clarence W. Robnett, and the said Clarence [47] W. Robnett did thereafter convey the said tracts to the defendant Elizabeth White, and the said Elizabeth White did thereafter convey the said tracts to the defendant the Clearwater Timber Company, a body corporate organized and existing under and in virtue of the laws of the State of Washington; and the said Pearl Washburn, hereinabove named and alleged to have

made entry of a certain described tract, of public land, did thereafter convey the said tract to one James B. McGrane, by whom the same was thereafter conveyed to one John E. Chapman, who afterward conveyed the same to the said defendant the Clearwater Timber Company; and the said William Haevernick, hereinabove named and alleged to have made entry of a certain described tract of public land, did thereafter convey the said tract to one Frank W. Kettenbach, and the said Frank W. Kettenbach did thereafter convey the same to the said defendant the Clearwater Timber Company; and the said Alma Haevernick, hereinbefore named and alleged to have made entry of a certain described tract of public land, did thereafter convey the said tract to the said Frank W. Kettenbach, and the said Frank W. Kettenbach did thereafter convey the same to the said defendant, the Clearwater Timber Company; and the said Geary Vanartsdalen, hereinabove named and alleged to have made entry of a certain described tract of public land, did thereafter convey the same to the said defendant the Clearwater Timber Company; and the said defendant the Clearwater Timber Company still holds the titles to the said several tracts.

The said George W. Harrington, hereinabove named and alleged to have made entry of a certain described tract of public land, did thereafter convey the same to one Bertha M. Turrish, by whom the said tract was conveyed to the defendant the Western Land Company, a body corporate organized and existing under the laws of the State of Minnesota; and

the said John W. Killinger, hereinabove named and alleged to have made entry of a certain described tract of public land, did thereafter convey the same to the defendant George E. Thompson; and the said John E. Nelson, hereinabove named and alleged to have made entry of a certain described tract of public land, did thereafter [48] convey the same to the defendant Elizabeth W. Thatcher, subject to a mortgage previously by the said Nelson made to the defendant Curtis Thatcher, which mortgage appears from the land record of Nez Perce County, wherein the land is situate, not to have been released; and the said Soren Hansen, hereinabove named and alleged to have made entry of a certain described tract of public land, did thereafter convey the said tract to the defendant William F. Kettenbach, subject to a mortgage previously by the said Hansen made to the defendant Curtis Thatcher, which mortgage appears from the land records of Nez Perce County, wherein the said land is situate, not to have been released, and which conveyance to the said defendant Kettenbach appears not to have been recorded; and the said William J. White and the said Mamie P. White, hereinabove named and alleged severally to have made entries of certain described tracts of public land, did thereafter severally convey the said tracts by them respectively entered to the defendant Elizabeth White;

And the defendant the Clearwater Timber Company, at the time it acquired titles to the lands hereinbefore alleged to have been conveyed to and still held by said body corporate, received said titles to

the said lands with the full knowledge, notice, information and advice of and concerning the facts hereinbefore alleged, and well knowing that the said entries and the titles issued thereupon were unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States; and the lands and the titles thereto hereinbefore alleged to have been conveyed respectively to the defendants the Western Land Company, George E. Thompson, Elizabeth W. Thatcher and Elizabeth White, are still held by said defendants respectively, [49] and the said defendants last hereinbefore named respectively received and now hold the titles to said lands with the full knowledge, notice, information and advice of and concerning the facts hereinbefore alleged, and well knowing that the said entries and the titles issued thereupon were unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States.

And the land and the title thereto hereinbefore alleged to have been conveyed as aforesaid by the said Soren Hansen to the said William F. Kettenbach, was entered by the said Soren Hansen in the unlawful, corrupt and fraudulent manner hereinbefore alleged in respect of all of the lands set out in this bill, and in furtherance of the agreement and conspiracy hereinbefore charged and the title to said land thus entered by the said Soren Hansen is invalid, obtained in fraud of the law, and voidable at the suit of the United States.

And the said Edna P. Kester, the said Elizabeth Kettenbach, and the said Elizabeth White, and the said Martha E. Hallett, hereinabove named and al-

leged severally to have made entries of certain described tracts of public land, do not appear from the land records of Nez Perce County, wherein the said lands are situate, to have hitherto conveyed, mortgaged, or otherwise disposed of the said tracts by them, respectively, entered, and the complainant does not know, and is unable certainly to ascertain whether or not they still retain the titles to the said tracts; but the complainant avers that the said persons, who are defendants to this bill, if they still retain such titles, hold the same in trust for the defendants William F. Kettenbach, George H. Kester, [50] William Dwyer and Clarence W. Robnett, and in accordance with the unlawful agreements hereinbefore alleged as having been made in respect of the said entries, or that the titles have been secretly conveyed to other persons, likewise in accordance with the said unlawful agreement; and the complainant prays that the said defendants Edna P. Kester, Elizabeth Kettenbach, Elizabeth White and Martha E. Hallett, be required to discover whether the titles to the said tracts are still held by the said defendants or have been conveyed to other persons, and that the complainant may have leave, if it shall appear that such conveyances have been made to other persons, to amend this bill by making such other persons additional parties defendant to this bill.

The said Ivan R. Cornell, Rowland A. Lambdin and Fred W. Shaeffer, having as aforesaid made entries severally of divers and several tracts of public land, which tracts are hereinbefore severally described in connection with the names of the said

persons respectively making entries thereof, did thereafter severally convey the said tracts and such titles as were so by them respectively acquired, to the defendants hereinbefore named, William F. Kettenbach and George H. Kester; and thereafter the said Kettenbach and Kester, by several deeds of conveyance, in which they were joined by their respective wives, did convey the said several tracts of land to the defendant the Potlatch Lumber Company, a body corporate organized and existing under and in virtue of the laws of the State of Maine, by which said body corporate the said lands and the titles thereto are now held, the said corporate defendant having taken the titles with the full knowledge, notice, information and [51] advice of and concerning the facts hereinbefore alleged, and well knowing that the said entries and the titles issued thereupon were unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States.

And the said Robert O. Waldman hereinbefore named and alleged to have made entry of a certain described tract of public land, did thereafter, by a deed of conveyance in which his wife joined, convey said tract and such title as was by him acquired, to the defendant, Clarence W. Robnett, and the said Clarence W. Robnett and his wife did thereafter convey the same to the defendant, Elizabeth White, and the said Clarence W. Robnett and wife did thereafter convey the said tract of land to the defendant, the Lewiston National Bank, and the said Elizabeth White did thereafter convey the said tract of land to the said Lewiston National Bank, a body corporate

organized and existing under and in virtue of the laws of the United States relative to National Banks by which said body corporate, the said tract of land, and the title thereto was held at the date of the filing of the original Bill of Complaint and at the time of the recording of the notice of *lis pendens* in this cause, the said corporate defendant having taken the title to said tract of land with the full knowledge, notice, information and advice of and concerning the facts hereinbefore alleged and well knowing that the said entry and the title issued thereon was unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States.

And the said Joseph B. Clute hereinbefore named, having as aforesaid made entry of a certain tract of public land which tract is hereinbefore described in [52] connection with the name of the said Clute in making his entry thereof, did thereafter convey the same to the defendants, William F. Kettenbach, and George H. Kester, and the said William F. Kettenbach and George H. Kester, thereafter by a deed of conveyance in which they were joined by their respective wives, did convey said tract of land to the said Idaho Trust Company, a body corporate, organized and existing under and in virtue of the laws of the State of Idaho, by which said body corporate said tract of land is now held, the said corporate defendant having taken the title to said last hereinbefore mentioned tract of land with the full knowledge, notice, information and advice of and concerning the facts hereinbefore alleged, and well knowing that the said entry and the title issued thereon was

unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States.

And the said Frances A. Justice, hereinbefore named and alleged to have made entry of a certain described tract of public land, did thereafter convey the same to the defendant Kittie E. Dwyer, and it does not appear from the land records of Nez Perce County, wherein the land is situate, that the said Kittie E. Dwyer has ever conveyed or otherwise disposed of said tract, and the said complainant does not know and is unable certainly to ascertain whether or not she still retains the title to the said tract; but the complainant avers that the said Kittie E. Dwyer, if she still retains the title to the said tract, holds the same in secret trust for the defendants William F. Kettenbach, George H. Kester, Clarence W. Robnett and William Dwyer, and in accordance [53] with the unlawful agreements hereinbefore alleged as having been made in respect of the said entry, or that the said title has been secretly conveyed to other persons likewise in accordance with the said unlawful agreement; and the complainant prays that the said defendant Kittie E. Dwyer be required to discover whether the title to the said tract is still held by the said defendant or has been conveyed to other persons and that the complainant may have leave, if it shall appear that such conveyance has been made to other persons, to amend this bill by making such other persons additional parties defendant to this bill.

Forasmuch, therefore, as the complainant has been so as above cheated and defrauded of its public

lands and is remediless at and by the strict rules of the common law, and is only relievable in a court of equity wherein such matters are fully cognizable and reviewable; and to the end that the said William F. Kettenbach, George H. Kester, Clarence W. Robnett, William Dwyer, The Idaho Trust Company, The Lewiston National Bank of Lewiston, Idaho, The Clearwater Timber Company, The Western Land Company, George E. Thompson, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, Kittie E. Dwyer, Potlatch Lumber Company and Robert O. Waldman may full, true, direct and certain answers make, according to the best of their knowledge, information and belief, to all and singular the matters and charges aforesaid, but not on oath, their answer on oath being hereby expressly waived, your complainant prays as follows:

That all of the said defendants hereinbefore in this bill named, and the several persons hereinbefore [54] named in connection with the description of said lands, may be held, adjudged and decreed to have defrauded the complainant of the lands and each and every description thereof hereinbefore set forth as patented by complainant to the several persons hereinbefore named, and that by reason of such fraud, the patents issued to them, or either of them, or to others in their behalf, be declared void, as such, be held for naught and set aside, and the said lands restored to the public domain of the complainant; and the said defendants, and each of them, be held to pay to the Treasurer of complainant, all such reason-

able sums of money as it may have found necessary, to lay out and expend in and about discovering and establishing the fraud as is hereinbefore set forth and charged, that this complainant may have all such further relief in the premises as may be conformable to equity and good conscience, and such as seems proper to this Honorable Court.

GEORGE W. WICKERSHAM,
Attorney General of the United States,
Solicitor for Complainant.

[Endorsed]: Filed Sept. 4, 1909. A. L. Richardson, Clerk. [55]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA,
Complainant.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KITTIE E.

DWYER, POTLATCH LUMBER COMPANY, ROBERT O. WALDMAN,

Defendants.

Demurrer to Bill in Equity.

To the Honorable Judges of the Circuit Court of the United States for the District of Idaho:

Comes now the defendants herein, William F. Kettenbach, George H. Kester, William Dwyer, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett and Kittie E. Dwyer and demurrers to the bill in equity heretofore filed herein, and for cause of demurrer allege:

1.

That said bill in equity does not state facts sufficient to constitute a cause of action against these demurring defendants, or either thereof. [56]

2.

That there is a misjoinder of parties defendant in said Amended Bill, and such misjoinder consists in this, to wit: That the defendants, Idaho Trust Company, the Lewiston National Bank of Lewiston, Idaho, The Clearwater Timber Company, The Western Land Company, George E. Thompson, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, Kittie E. Dwyer, Potlatch Lumber Company, and Robert O. Waldman are improperly joined in a cause of action with William F. Kettenbach, George H. Kester, Clarence W. Robnett and William Dwyer, no concert of action appearing from the bill and no allegation wherein the said parties can be made jointly liable for any act or violation of law,

and it does not appear from said bill that the said defendants were to share jointly or at all in the proceeds of the sale of said land, or in the said land, or the money received therefor or contributed jointly for the procuring of said parcel or tract of land or either thereof, and it does not appear from said bill that the said defendants are jointly liable for any act or violation of the law, or the rules of equity in any way or manner whatsoever, or at all.

3.

That said bill does not state facts sufficient to confer jurisdiction on the above-entitled court to hear and determine the matters attempted to be raised and pleaded therein, and that the said bill does not state facts sufficient to show that the above-entitled court has jurisdiction over any of the subject matter contained or pleaded therein, or jurisdiction to hear and determine the same. [57]

4.

That said bill is indefinite, unintelligible, ambiguous, and uncertain, and that such uncertainty consists in this, to wit, that it does not appear therefrom in what way or manner the said defendants acted, or what overt acts were committed by either of said defendants in procuring title to said tract of land, or any part thereof or the manner in which the said land was acquired.

5.

That said bill in equity is further indefinite, unintelligible, ambiguous and uncertain, and such uncertainty consists in this, to wit, that it does not appear therefrom whether or not the said alleged agree-

ments, either or any thereof were made prior to the filing of the sworn statements of the various entry-men, or subsequent to the filing thereof, and prior to the making of final proof, and it does not appear therefrom that the said tracts of land or either thereof at the date of filing of the original bill in equity herein stood of record in the names of said defendants, or either thereof.

6.

That said Amended Bill as a whole does not state facts sufficient to constitute a cause of action against these demurring defendants, or either thereof.

Wherefore these demurring defendants demand judgment on demurrer.

GEO. W. TANNAHILL,
Solicitor for Demurring Defendants Herein. [58]
State of Idaho,
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says that he is the solicitor for the demurring defendants above named, and that said demurrer is made in good faith, and not for the purpose of delay and is, as affiant verily believes, well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 5th day of October, A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State of
Idaho. [59]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KITTIE E. DWYER, POTLATCH LUMBER COMPANY, ROBERT O. WALDMAN,

Defendants.

Affidavit of Service of Demurrer to Bill in Equity.

State of Idaho,

County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, deposes and says that he is an attorney at law, and is the attorney of record for the above-named defendants in the above-entitled action, and that he resides in the city of Lewiston, Nez Perce County, State of Idaho.

That C. H. Lingenfelter is the United States District Attorney for the District of Idaho, and by virtue

thereof, attorney for the United States of America, the plaintiff in said cause.

That he, the said C. H. Lingenfelter, resides at the city of Boise, County of Ada, State of Idaho; [60] that in each of said two places there is a United States Postoffice, and between said two places there is a regular communication by mail.

That on the 5th day of October, A. D. 1909, deponent served a true copy of the foregoing Demurrer to Bill in Equity on file herein on the said C. H. Lingenfelter, the said attorney for said plaintiff, by depositing such copy of Demurrer to Bill in Equity on said date in the Postoffice at said city of Lewiston as aforesaid, properly enclosed in an envelope addressed to the said C. H. Lingenfelter, United States District Attorney at the city of Boise, County of Ada, State of Idaho, his said place of residence, and prepaying the postage thereon.

GEO W. TANNAHILL.

Subscribed and sworn to before me this 5th day of October, A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State of Idaho.

[Endorsed]: Filed Oct. 9th, 1909. A. L. Richardson, Clerk. [61]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KITTIE E. DWYER, POTLATCH LUMBER COMPANY, ROBERT O. WALDMAN,

Defendants.

Notice of Motion to Strike [Certain Portions from Bill in Equity].

To the Plaintiff Above Named, and to GEORGE W. WICKERSHAM, Attorney General for United States of America, and by Virtue Thereof, Attorney for Plaintiff, and to Each of You:

TAKE NOTICE: That on the 1st day of the next regular term of the above-entitled court, the same be-

ing the 25th day of October, A. D. 1909, at the courtroom of the above-entitled court in Moscow, Latah County, Idaho, at ten o'clock A. M. of said day, or as soon thereafter as counsel can be heard, the moving defendants herein will present and argue their motion to strike out of and from the Bill in Equity heretofore filed herein, the specific portions set out and specifically described in the annexed [62] motion.

Said motion will be made and based upon the Bill in Equity heretofore made and filed herein, and all the files and records in the action.

Upon the argument of said motion, there will be used the bill in equity heretofore filed herein, the defendant's original Notice of Motion heretofore served and filed herein, and all the files and records in the cause.

GEO. W. TANNAHILL,
Solicitor for the Moving Defendants. [63]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY,

GEORGE E. THOMPSON, ELIZABETH
W. THATCHER, CURTIS THATCHER,
ELIZABETH WHITE, EDNA P. KES-
TER, ELIZABETH KETTENBACH, MAR-
THA E. HALLETT, KITTIE E. DWYER,
POTLATCH LUMBER COMPANY, ROB-
ERT D. WALDMAN,

Defendants.

**Motion to Strike [Certain Portions from Bill in
Equity].**

Come now the defendants herein, William F. Kettenbach, George H. Kester, William Dwyer, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, and Kitty E. Dwyer, and moves the Court to strike out of and from the bill in equity heretofore filed herein the following portions:

1.

All of paragraph two thereof, upon the ground and for the reason that the same is irrelevant, redundant, incompetent, surplusage and immaterial.

2.

All of paragraph five thereof, upon the ground and for the reason that it is practically a repetition of paragraph four, is redundant, surplusage, incompetent, [64] irrelevant and immaterial.

3.

All of paragraph eight thereof, upon the ground that the same is redundant, surplusage, irrelevant, incompetent, and immaterial.

4.

All of paragraph nine thereof, upon the ground that the same is redundant, surplusage, irrelevant,

incompetent, and immaterial.

5.

All of that portion of the prayer of said bill, beginning with the word "and," the same being the ninth word in line two, from the top of page 48, and ending with the word "expend," the same being the 7th word in line five from the top of page 48, upon the ground that the same is redundant, surplusage, irrelevant, and immaterial.

6.

All of that portion of the prayer of said Amended Bill beginning with the word "in," the same being the eighth word in line five from the top of page 48, and ending with the word "charge," the same being the first word in line seven from the top of page 48, upon the ground that the same is redundant, surplusage, irrelevant, incompetent and immaterial.

GEO. W. TANNAHILL,

Solicitor for the Moving Defts., Residing at Lewiston, Idaho.

State of Idaho,

County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says that he is the solicitor for the moving defendants named in the foregoing motion, and that the said motion is made in good faith, and not for the purpose of delay, and is, as affiant verily believes, well [65] founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 5th day of October, A. D. 1909.

[N. P. Seal] SAMUEL C. TANNAHILL,
Notary Public for Nez Perce County, State of
Idaho. [66]

*In the Circuit Court of the United States for the Dis-
trict of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,
vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NA-
TIONAL BANK OF LEWISTON, IDAHO,
THE CLEARWATER TIMBER COM-
PANY, THE WESTERN LAND COM-
PANY, GEORGE E. THOMPSON, ELIZA-
BETH W. THATCHER, CURTIS THAT-
CHER, ELIZABETH WHITE, EDNA P.
KESTER, ELIZABETH KETTENBACH,
MARTHA E. HALLETT, KITTIE E.
DWYER, POTLATCH LUMBER COM-
PANY, ROBERT O. WALDMAN,
Defendants.

Affidavit of Service of Motion to Strike.

State of Idaho,
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, deposes and
says that he is an attorney at law, and is the at-

torney of record for the above-named defendants in the above-entitled action, and that he resides in the city of Lewiston, Nez Perce County, State of Idaho.

That C. H. Lingenfelter is the United States District Attorney for the District of Idaho, and by virtue thereof, attorney for the United States of America, the plaintiff in said cause.

That he, the said C. H. Lingenfelter, resides at the city of Boise, County of Ada, State of Idaho; that in each of said two places there is a United States postoffice, and between said two places there is a regular [67] communication by mail.

That on the 5th day of October, A. D. 1909, deponent served a true copy of the foregoing Notice of Motion and Motion to Strike certain portions of the bill in equity on file herein on the said C. H. Lingenfelter, the said attorney for said plaintiff, by depositing such copy of Notice of Motion and Motion on said date in the Postoffice at said city of Lewiston aforesaid, properly enclosed in an envelope, addressed to the said C. H. Lingenfelter, United States District Attorney at the city of Boise, County of Ada, State of Idaho, his said place of residence, and prepaying the postage thereon.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 5th day of October, A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State
of Idaho.

[Endorsed]: Filed Oct. 9, 1909. A. L. Richardson, Clerk. [68]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KITTIE E. DWYER, POTLATCH LUMBER COMPANY, ROBERT O. WALDMAN,

Defendants.

Appearance [of Attorney for E. W. Thatcher et al.].

To the Honorable A. L. Richardson, Clerk of the Above-entitled Court:

Please enter my appearance, as attorney for defendants Elizabeth W. Thatcher, Curtis Thatcher

and Elizabeth Kettenbach in the above-entitled cause.

Dated, at Lewiston, Idaho, this 30th day of October, A. D. 1909.

EUGENE A. COX,

Attorney for Defendants Elizabeth W. Thatcher,
Curtis Thatcher and Elizabeth White. Residence and Postoffice Address, Lewiston, Idaho.

[Endorsed]: Filed Nov. 1, 1909. A. L. Richardson, Clerk. [69]

**[Appearance of James E. Babb for Idaho Trust Co.,
et al.]**

*In the Circuit Court of the United States for the
Ninth Judicial Circuit and District of Idaho,
Northern Division.*

No. 406.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

APPEARANCE OF JAMES E. BABB, AS SOLICITOR AND OF COUNSEL FOR THE DEFENDANTS IDAHO TRUST COMPANY, LEWISTON NATIONAL BANK, CLEARWATER TIMBER COMPANY AND POTLATCH LUMBER COMPANY.

To the Clerk of the Above-entitled Court:

Now comes James E. Babb, as solicitor and of

counsel for Idaho Trust Company, Lewiston National Bank of Lewiston, Idaho, Clearwater Timber Company and Potlatch Lumber Company, defendants in the above-entitled cause, and enters the appearance of said defendants therein, and each of them, and his own appearance as solicitor and of counsel for said defendants, and each of them, and requests that these appearances be entered by the Clerk in the Order Book on Monday the 1st day of November, 1909.

Respectively,

JAMES E. BABB,

Postoffice address: Lewiston National Bank Building, Lewiston, Idaho,

Solicitor and of Counsel for Defendants Idaho Trust Company, Lewiston National Bank of Lewiston, Idaho, Clearwater Timber Company and Potlatch Lumber Company.

[Endorsed]: Filed Nov. 1, 1909. A. L. Richardson, Clerk. [70]

In the Circuit Court of the United States for the Ninth Judicial Circuit and District of Idaho, Northern Division.

No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

Affidavit of Service [of Appearance of James E. Babb].

State of Idaho,

County of Nez Perce,—ss.

John R. Becker, being first duly sworn, on oath deposes and says:

That I am and at all times herein mentioned have been a citizen of the United States and of the State of Idaho, residing at Lewiston, in Nez Perce County, therein; that I am and at all times herein mentioned have been over twenty-one years of age and not a party to or interested in the above-entitled action; that I am and at all times herein mentioned have been a clerk in the office of James E. Babb, solicitor and of counsel for the defendants, Idaho Trust Company, Lewiston National Bank, Clearwater Timber Company and Potlatch Lumber Company, in the above-entitled cause; that the residence and post-office address of said James E. Babb is and at all times herein mentioned has been Lewiston, Idaho; that there is and at all times herein mentioned has been a United States Postoffice in the said City of Lewiston; that Hon. George W. Wickersham is and at all times herein mentioned has [71] been Attorney General of the United States and, as such, solicitor and of counsel for the complainant in the above-entitled cause; that the postoffice address of said Attorney General is and at all times herein mentioned has been Washington, D. C.; that Hon. Peyton Gordon is and at all times herein mentioned has been Assistant Attorney General of the United

States, and as such, solicitor and of counsel for the complainant in the above-entitled cause; that the postoffice address of said Assistant Attorney General is and at all times herein mentioned has been, Moscow, Idaho; that Hon. C. H. Lingenfelter is and at all times herein mentioned has been United States District Attorney for the District of Idaho and, as such, solicitor and of counsel for the complainant in the above-entitled cause; that the postoffice address of said District Attorney is and at all times herein mentioned has been Moscow, Idaho; that there is and at all times herein mentioned has been a United States postoffice in said Washington and in said Moscow, and a regular communication by United States mail between each of said cities, respectively, and the city of Lewiston, aforesaid; that on the 1st day of November, 1909, I placed a full, true and correct copy of the Appearance of James E. Babb as solicitor and of counsel for the defendants Idaho Trust Company, Lewiston National Bank, Clearwater Timber Company and Potlatch Lumber Company, theretofore filed in said cause on the day last aforesaid, in each of three separate envelopes and sealed the same, and addressed the same legibly as follows, respectively, to wit:

Hon. Geo. W. Wickersham, U. S. Attorney-General, Washington, D. C.

Hon. Peyton Gordon, Asst. U. S. Attorney-General, Moscow, Idaho;

Hon. C. H. Lingenfelter, U. S. District Attorney, Moscow, Idaho; [72]

and stamped thereon sufficient United States post-

age stamps to entitle the same to delivery by United States mail, and placed the same, on the day last aforesaid, so inclosed, sealed, addressed and stamped, in the United States postoffice at Lewiston, Idaho.

JOHN R. BECKER.

Subscribed and sworn to before me this 6th day of November, 1909.

RAY C. HYKE,
Notary Public in and for Nez Perce County, State
of Idaho.

[Endorsed]: Filed Nov. 9, 1909. A. L. Richardson, Clerk. [73]

**[Marshal's Return of Service of Subpoena Ad
Respondendum.]**

I hereby certify that I received the within Subpoena Ad Respondendum, together with eighteen duplicate copies, and certified copies of complaint at Moscow, Latah County, Idaho, on the 20th day of Sept., 1909, and served the same upon William F. Kettenbach, by handing to and leaving with the said William F. Kettenbach a duplicate copy of the within Subpoena Ad Respondendum, together with certified copy of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 23d day of Sept., 1909.

Served the same upon Clarence Robnett by handing to and leaving with the said Clarence Robnett a duplicate copy of the within Subpoena Ad Respondendum, together with certified copy of com-

plaint, personally at Lewiston, Nez Perce County, Idaho, on the 23d day of Sept., 1909.

Served the same upon William Dwyer, by handing to and leaving with said William Dwyer a copy of the within Subpoena Ad Respondendum, together with a certified copy of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 23d day of Sept., 1909.

Served the same upon Curtis Thatcher, by handing to and leaving with the said Curtis Thatcher a duplicate copy of the within Subpoena Ad Respondendum, together with a certified copy of complaint, personally at Lewiston, Nez Perce County, Idaho, on the 23d day of Sept., 1909.

Served the same upon Elizabeth White, by handing to and leaving with the said Elizabeth White, a duplicate copy of the within Subpoena Ad Respondendum, together with certified copy of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 23d day of Sept., 1909. [74]

Served the same upon Elizabeth Kettenbach by handing to and leaving with the said Elizabeth Kettenbach a duplicate copy of the within Subpoena Ad Respondendum, together with a certified copy of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 23d day of Sept., 1909.

Served the same upon Kittie E. Dwyer, by handing to and leaving with the said Kittie E. Dwyer, a duplicate copy of the within Subpoena Ad Respondendum, together with a certified copy of complaint, personally at Lewiston, Nez Perce County, Idaho, on the 23d day of Sept., 1909.

Served the same upon Martha E. Hallett, by handing to and leaving with the said Martha E. Hallett, a duplicate copy of the within Subpoena Ad Respondendum, together with certified copy of complaint, personally, at Divide Creek, Idaho County, Idaho, on the 25th day of Sept., 1909.

Served the same upon The Idaho Trust Co., by handing to and leaving with F. W. Kettenbach, president of the said Idaho Trust Co., a duplicate copy of the within Subpoena Ad Respondendum, together with a certified copy of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 27th day of Sept., 1909.

Served the same upon The Lewiston National Bank, by handing to and leaving with F. W. Kettenbach, President of the said Lewiston National Bank, a duplicate copy of the within Subpoena Ad Respondendum together with a certified copy of complaint, personally, at Lewiston, Nez Perce County, Idaho on the 27th day of Sept., 1909. [75]

Served the same upon The Clearwater Timber Company, by handing to and leaving with James E. Babb, Statutory Agent of the said Clearwater Timber Company, a duplicate copy of the within Subpoena Ad Respondendum, together with a certified copy of complaint, personally at Lewiston, Nez Perce County, Idaho, on the 23d day of Sept., 1909.

Served the same upon the Western Land Company, by handing to and leaving with William Morgan, Statutory Agent of the said Western Land Company, a duplicate copy of the within Subpoena Ad Respondendum, together with a certified copy of

complaint, personally, at Moscow, Latah County, Idaho, on the 22d day of Sept., 1909.

Served the same upon Edna P. Kester, by handing to and leaving with the said Edna P. Kester, a duplicate copy of the within Subpoena Ad Respondendum, together with a certified copy of complaint, personally at Spirit Lake, Kootenai County, Idaho, on the 30th day of Sept., 1909.

Served the same upon The Potlatch Lumber Company, by handing to and leaving with W. A. Laird, Statutory Agent of the said Potlatch Lumber Company, a duplicate of the within Subpoena Ad Respondendum, together with a certified copy of the complaint, personally, at Potlatch, Latah County, Idaho, on the 1st day of Oct. 1909.

And after due search and diligent inquiry I am unable to find the defendants Geo. H. Kester, Geo. E. Thompson, Robt. O. Waldman and Elizabeth W. Thatcher within the District of Idaho.

Moscow, Idaho, Oct. 2d, 1909.

S. L. HODGIN,
U. S. Marshal,
By J. E. Greene,
Deputy. [76]

I hereby certify that I served the within Subpoena Ad Respondendum upon George H. Kester, one of the defendants named therein, at Moscow, Latah County, Idaho, on October 26, 1909, by handing to and leaving with the said George H. Kester, personally, a duplicate of the within Subpoena Ad

Respondendum, together with a certified copy of the complaint.

Moscow, Idaho, Oct. 27, 1909.

S. L. HODGIN,
U. S. Marshal.
By Jno. Jackson,
Deputy. [77]

*In the Circuit Court of the United States for the
Northern Division of the District of Idaho.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NA-
TIONAL BANK OF LEWISTON, IDAHO,
THE CLEARWATER TIMBER COM-
PANY, THE WESTERN LAND COM-
PANY, GEORGE E. THOMPSON, ELIZA-
BETH W. THATCHER, CURTIS
THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KET-
TENBACH, MARTHA E. HALLETT, KIT-
TIE E. DWYER, POTLATCH LUMBER
COMPANY, ROBERT O. WALDMAN,
Defendants.

Subpoena ad Respondendum.

The President of the United States of America, to William F. Kettenbach, George H. Kester, Clarence W. Robnett, William Dwyer, The Idaho Trust Company, The Lewiston National Bank of Lewiston, Idaho, The Clearwater Timber Company, The Western Land Company, George E. Thompson, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, Kittie E. Dwyer, Potlatch Lumber Company, Robert O. Waldman, Greeting:

You and each of you are hereby commanded that you be and appear in said Circuit Court of the United States, at the courtroom thereof, in Moscow in said District, on the first Monday of November next, which will be the first day of November, A. D. 1909, to answer [78] the exigency of a Bill of Complaint exhibited and filed against you in our said Court, wherein The United States of America is complainant and you are defendant and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in nowise to omit under the pains and penalties of what may befall thereon.

And this is to COMMAND you the MARSHAL of said District, or your DEPUTY, to make due service of this our WRIT of SUBPOENA and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FUL-

LER, Chief Justice of the Supreme Court of the United States, and the Seal of our said Circuit Court affixed at Boise in said District, this 15th day of September in the year of our Lord One Thousand Nine Hundred and Nine and of the Independence of the United States the One Hundred and Thirty-fourth.

A. L. RICHARDSON,
Clerk.

[Endorsed]: Filed Nov. 29, 1909. A. L. Richardson, Clerk. [79]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KIT-TIE E. DWYER, POTLATCH LUMBER COMPANY, ROBERT O. WALDMAN,
Defendants.

**Exceptions [of William F. Kettenbach et al.] to Bill
in Equity.**

EXCEPTIONS TO BILL IN EQUITY.

To the Honorable the Justices of the Circuit Court
of the United States for the District of Idaho:

The defendants herein, William F. Kettenbach, George H. Kester, William Dwyer, Edna P. Kester, Elizabeth White, Martha E. Hallett and Kittie E. Dwyer, by leave of Court first had and obtained file this their exceptions to the Bill in Equity filed herein September 15, A. D. 1909, as follows:

1.

For that the allegations in the first paragraph of said Bill in Equity beginning with the word "that," the same being the first word in line two from the top of page two of said bill, and ending with the word "office," the same being the last word in paragraph [80] two, upon the ground and for the reason that the same is impertinent and should be expunged.

2.

For that the allegations in said bill commencing with the word "that," the same being the first word in the first line of paragraph two and ending with the word "possession," the same being the last word in paragraph two as follows:

"That pursuant to the authority given by said act, the Commissioner of the General Land Office prescribed and promulgated certain regulations to give effect to the provisions of said act, among others, the following:

That after the expiration of the 60 days' publica-

tion, the person desiring to purchase the land described in his application to purchase should under oath, make answer to certain questions as follows:

‘Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever by which the title which you may acquire from the Government of the United States, may inure, in whole or in part, to the benefit of any person except yourself?’

And

‘Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?’

And

‘Has any other person than yourself, or has any firm, corporation, or association, any interest in the entry you are now making, or in the land, or in the timber thereon?’

Also the following:

‘Did you pay, out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?’

And

‘Where did you get the money with which to pay [81] for this land and how long have you had the same in your actual possession?’ ”

upon the ground and for the reason that the same is impertinent, and should be expunged.

3.

For that the allegations in paragraph five of said bill beginning with the word "that," the same being the first word in the first line of said paragraph five, and ending with the word "them," and especially that portion of paragraph five beginning with the word "and," the same being the third word in the first line on page 9, and ending with the word "them," the same being the last word in paragraph five, as follows:

"And it was intended, designed and contemplated by the said defendants that each of the said other persons so appearing and answering should, in answer to the said interrogatories when the same should be propounded to him, on his oath declare, represent, and swear, among other things, that he had not, since the making of the sworn statement previously as aforesaid made and filed by him in applying to make entry, sold or transferred his claim to the land sought by him to be entered; and that he, the said applicant, had not, at the time of his appearing and answering the said interrogatories, directly or indirectly made any contract or agreement or contract in any way or manner, with any person whomsoever, by which the title sought by such applicant to be acquired might inure, in whole or in part, to the benefit of any person except himself; and that he, the said applicant, was at the time last aforesaid making his intended entry in good faith for the appropriation of the land exclusively to his own use

and not for the use and benefit of any other person; and that no other person than himself, the said applicant, and that no firm, corporation or association, had at the time last aforesaid, any interest in the said entry or in the land sought to be entered or in the timber upon the said land; the said defendants intending, designing and contemplating that each of the said other persons so to be caused and procured to answer the said interrogatories in the manner and to the effect last stated should in doing so commit and be guilty of wilful and corrupt false swearing, and should swear falsely and corruptly, and should defraud the United States, and should fraudulently deceive and impose upon the officers of the United States charged with the administration [82] of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be induced to make the proofs and to answer the interrogatories aforesaid in the manner and to the effect aforesaid should, as the said defendants intended and contemplated, before the making of such proofs and answers, have made and entered into the contracts and agreements hereinbefore stated, which contracts were to be, at the time last aforesaid, still continuing and subsisting, by which the title to be by him acquired should inure to the benefit of the said defendants or of some of them, and by which the said defendants or some of them should have an interest in the land and the title

so to be acquired, and by reason of which contract and agreement such person seeking to make entry did not do so in good faith to appropriate such land to his own exclusive use and benefit, but for the use and benefit of the said defendants or some of them.”

upon the ground and for the reason that the same is impertinent and should be expunged.

4.

For that the allegations contained in the 8th paragraph of said bill, beginning with the word “that,” the same being the first word in the first line of paragraph eight, and ending with the word “title,” the same being the last word of paragraph 8, and the last word in line 15 from the top of page 15, upon the ground that the same is impertinent, and should be expunged.

5.

For that the allegations of said bill contained in paragraph 9 thereof, beginning with the word “office,” the same being the last word in paragraph 9, and the last word in line 2 from the top of page 17, upon the ground and for the reason that the same is impertinent, and should be expunged.

6.

For that the allegations in the said bill beginning with the word “and,” the same being the 9th word in [83] line 2 from the top of page 48, and ending with the word “charged,” the same being the first word in line seven from the top of page 48, as follows:

“And the said defendants, and each of them,

be held to pay to the Treasurer of Complainant all such reasonable sums of money as it may have found necessary to lay out and expend in and about discovering and establishing fraud as is hereinbefore set forth and charged."

upon the ground and for the reason that the same is impertinent and should be expunged.

GEO. W. TANNAHILL,

Solicitor for Defendants William F. Kettenbach, George H. Kester, William Dwyer, Kitty E. Dwyer, Elizabeth White, and Martha E. Hallett, and Edna P. Kester, Residing at Lewiston, Idaho.

State of Idaho,

County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says that he is the solicitor for the excepting defendants named in the foregoing exception, and that said exception is proposed in good faith and not for the purpose of delay, and is, as affiant verily believes, well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 29 day of Oct., A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
N. P. for Nez Perce County, Idaho.

[Endorsed]: Filed Nov. 30, 1909. A. L. Richardson, Clerk. [84]

[Order Allowing Filing of Certain Exceptions, etc.]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NA-
TIONAL BANK OF LEWISTON, IDAHO,
THE CLEARWATER TIMBER COM-
PANY, THE WESTERN LAND COM-
PANY, GEORGE E. THOMPSON, ELIZA-
BETH W. THATCHER, CURTIS
THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KET-
TENBACH, MARTHA E. HALLETT,
KITTEE E. DWYER, POTLATCH LUM-
BER COMPANY, ROBERT O. WALD-
MAN,

Defendants.

PEYTON GORDON, Esq., Special Assistant to
the Attorney General, Solicitor for Com-
plainant.

GEORGE W. TANNAHILL, Esq., Solicitor for
Defendants.

DIETRICH, District Judge:

The formal exceptions tendered upon behalf of

some of the defendants in lieu of a motion to strike out certain portions of the bill may be filed. However, in view of the fact that some of the defendants have not yet pleaded, a ruling upon the demurrer and exceptions interposed by certain of the defendants will be withheld until the time for all of the defendants to plead has elapsed.

Dated this 30th day of November, 1909.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed November 30th, 1909. A. L. Richardson, Clerk. [85]

**[Answer of Elizabeth Kettenbach to Bill of
Complaint.]**

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,
vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NA-
TIONAL BANK OF LEWISTON, IDAHO,
THE CLEARWATER TIMBER COM-
PANY, THE WESTERN LAND COM-
PANY, GEORGE E. THOMPSON, ELIZA-
BETH W. THATCHER, CURTIS THAT-
CHER, ELIZABETH WHITE, EDNA P.

KESTER, ELIZABETH KETTENBACH,
MARTHA E. HALLETT, KITTIE E.
DWYER, POTLATCH LUMBER COM-
PANY, ROBERT O. WALDMAN,

Defendants.

ANSWER OF DEFENDANT ELIZABETH
KETTENBACH.

The answer of Elizabeth Kettenbach, one of the defendants, to the bill of complaint of the United States of America, complainant.

This defendant Elizabeth Kettenbach now, and at all the times hereafter, saving to herself all and all manner of benefit or advantage of exception, or otherwise, that can, or may be had, or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material, or necessary for her to answer, answering says: [86]

1.

This defendant admits the allegations of paragraphs I and II of said bill of complaint.

2.

This defendant admits the following portion of the allegations of paragraph XII of said bill of complaint, to wit: From and including the words in said paragraph XII "Elizabeth Kettenbach, on the 25th day of April, 1904," to and including the words "Elizabeth Kettenbach, the tract last aforesaid."

This defendant admits that she has not hitherto mortgaged, or otherwise disposed of, the said tract of land by her entered.

3.

This defendant denies that she made, entered into, or had, directly or indirectly, or otherwise, or at all, at any time any fraudulent, corrupt, or unlawful, or other contract, agreement, arrangement, or understanding, of any kind whatsoever with her codefendants, or with any of them, or with any other person, firm or corporation whatsoever, or that she agreed or arranged with her codefendants, or any of them, or with any other person, firm or corporation whatsoever, that she would make an entry, or purchase any public lands of the United States under any pretended, or apparent, or other accordance with the aforesaid act of Congress approved June 3, 1878, as amended August 4, 1892, or otherwise, or that she would, upon obtaining title to the said land, convey the said, or any, title, or tract to her codefendants, or to any of them, or at the direction, or for the benefit of her codefendants, or any of them, to some person, firm, or body corporate, to be by said codefendants, or by [87] any other person, firm or corporation designated; and denies that her codefendants, or any of them, or any other person, firm or corporation, agreed, contracted, or arranged that they, or any of them, or any other person, firm or corporation would pay to this defendant a certain, or any, sum of money, or any other thing for the tract of land by her entered, or to be entered by way of recompense to her for her costs, labor and trouble incurred, in acquiring title to said, or any, tract, from the United States, or for any other consideration; and denies that her codefendants, or

any of them, or any other person, firm or corporation agreed or promised to furnish or advance to this defendant, any money whatsoever, or so much money as might be necessary to enable her to pay for such land, or to defray the other, or any, expenses. incident to obtaining title to such land.

4.

Defendant denies that at divers, or any, times, after the making of the said, or any, agreement as alleged, or at any other time, or at all, in pursuance or execution thereof, or otherwise, or at all, this defendant's codefendants, or any of them, or any other person, firm or corporation, unlawfully, corruptly or fraudulently, or otherwise, induced or procured this defendant to apply to purchase said, or any, tract of lands, and denies that her application was false, fraudulent, illegal, or invalid, or was made in pursuance of any unlawful, corrupt, or fraudulent agreement; and denies that this defendant had any contract, understanding, or agreement whatsoever for the sale of said lands applied for by her, or of any interest therein, or part thereof, or timber thereon, prior to the issuance of patent to this defendant, and denies that her codefendants, or any of them, or any other person, firm [88] or corporation, had agreed, or did, at any time, agree, to buy the said lands, or any part thereof, or interest therein, or timber thereon.

5.

Defendant denies that she did not pay out of her own individual funds, every expense and all expenses in connection with the filings and entries made by

her, and in connection with the acquisition of title to the land acquired by her, and denies that she did not expect to pay every expense in connection with the acquisition of title to the said lands, with her own money, and this defendant denies that she applied for, entered, or acquired title to the said lands, for speculative purposes, and denies that she did not apply to enter and enter the same for her own exclusive use and benefit, and denies that she applied for, entered, or acquired title to the said lands, for the use, benefit or advantage of her codefendants, or any of them, or any other person, firm or corporation whatsoever.

6.

Defendant denies that this defendant's application or entry of said lands is, or was, illegal, fraudulent, or invalid, and denies that the patent issued to this defendant, is, or was voidable at the suit of the United States, or otherwise, and denies that the United States has been defrauded, or its officers deceived, defrauded or misled in any manner or matter whatsoever in connection with the said application, entry, or issuance of the said patents.

7.

Defendant denies every combination, conspiracy, and confederation, and every unlawful, corrupt or fraudulent agreement, contract, arrangement, understanding, act [89] and practice alleged to have been at any time had, or made, with or by this defendant, in said bill of complaint.

8.

Defendant denies that she holds the title to the said

lands so entered by her, in secret, or any trust, for her codefendants, or any of them, or for any other person, firm or corporation whatsoever, and denies that her codefendants, or any of them, or any other person, firm or corporation whatsoever, has, or have, any right, title, interest, estate, claim, or demand of any kind whatsoever, of, in or to the said lands or premises, or any part thereof, or interest therein, or timber thereon.

9.

Defendant admits that she applied for, entered and acquired title to the said lands under the act of Congress, June 3, 1878, known as the Timber and Stone Act, and acts amendatory thereof, and for and in consideration of the sum of \$400, which amount was paid by this defendant to the Receiver of the United States Land Office, at Lewiston, Idaho, for said lands at the time of making her final proof thereon, and that the patent for the lands so entered by this defendant was dated and issued on the 31st day of December, 1904.

10.

As to all of the other allegations and averments of the said bill of complaint, not hereinabove admitted or denied by this defendant, this defendant alleges that she is a stranger as to all of the same, and has not knowledge, or information, or belief, concerning the same, sufficient to enable her to answer the same, or any part thereof, and therefore, for want of such knowledge, information [90] and belief, denies the same so as to leave, and does leave, the complainant to make such proof thereof as it shall be able to produce.

11.

That by the issuance and delivery of the patent to this defendant in the said bill of complaint mentioned, this defendant acquired title and possession, and right to the possession of the land in said patent described; that this defendant has not mortgaged, incumbered, transferred or conveyed, or agreed so to do, the said premises, or any part thereof, or interest therein, or timber thereon, but is now, and has been ever since the date of the issuance of the said patent, the owner of the said premises, and the whole thereof, in fee simple absolute, and that defendant has paid all taxes assessed against the said premises since the date of the issuance of the said patent.

And this defendant further answering denies that the complainant is entitled to the relief, or any part thereof, in said bill of complaint demanded, and prays the same advantage of this answer as if she had pleaded or demurred to the said bill of complaint, and prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

ELIZABETH KETTENBACH.

EUGENE A. COX,

Postoffice and Residence Address, Lewiston, Idaho,
Solicitor and Counsel for Defendant Elizabeth
Kettenbach.

[Endorsed]: Filed Dec. 6, 1909. A. L. Richardson, Clerk. [91]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NA-
TIONAL BANK OF LEWISTON, IDAHO,
THE CLEARWATER TIMBER COM-
PANY, THE WESTERN LAND COM-
PANY, GEORGE E. THOMPSON,
ELIZABETH W. THATCHER, CURTIS
THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KET-
TENBACH, MARTHA E. HALLETT,
KITTEE E. DWYER, POTLATCH LUM-
BER COMPANY, ROBERT O. WALD-
MAN,

Defendants.

**Answer of Lewiston National Bank [to Bill of
Complaint].**

The answer of Lewiston National Bank, one of
the defendants, to the bill of complaint of the United
States of America, complainant.

This defendant, Lewiston National Bank, now and
at all times hereafter saving to itself all and all man-
ner of benefit or advantage of exception or otherwise

that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant [92] is advised it is material or necessary for it to make answer to, answering, says:

1.

This defendant admits the allegations of paragraphs numbered I and II in the said bill of complaint.

2.

The defendant admits the following portions of the allegations in paragraph XII in the said bill of complaint, to wit:

From and including the words in said paragraph XII "Van V. Robertson on the 25th day of February, 1903," to and including the words therein: "said Van V. Robertson the tract last aforesaid."

From and including the words therein "James C. Evans on the 24th day of March" to and including the words therein: "Evans the tract last aforesaid."

From and including the words therein "Lon E. Bishop on the 24th day of March," to and including the words therein: "United States conveying to the said Guy L. Wilson the tract last aforesaid."

From and including the words therein "Daniel W. Greenburg on the 26th day of April," to and including the words therein: "United States conveying to the said William E. Helkenberg the tract last aforesaid."

3.

This defendant also admits the following portion of paragraph XXII of said bill of complaint, to wit:

From and including the words therein: "the said James C. Evans, Lon E. Bishop, Frederick W. Newman" to and including the words therein: "The Idaho Trust Company, a body corporate, organized and existing under and in virtue of the laws of the State of Idaho, by which said body corporate the said lands and the titles thereto are now [93] held."

From and including the words therein: "The said William McMillan and the said Hattie Rowland," to and including the words therein: "convey the said tracts to the defendant, the Idaho Trust Company."

And the following therein, to wit: "and the said lands and the titles thereto are now held by the defendants, the Idaho Trust Company."

From and including the words therein: "the said Van V. Robertson, hereinabove named and alleged to have made entry of a tract," to and including the words therein: "the Lewiston National Bank, by which body corporate the said titles herein alleged to have been conveyed to it are now held."

4.

Defendant denies that it took the title to any of the real property described in the said bill of complaint with the full knowledge or any knowledge, or with full notice or any notice, or with full information or any information, or with full advice or any advice, of or concerning the facts or any of them in the said bill of complaint alleged from and including paragraph III of said bill of complaint to, but not including, the words in paragraph XXII of said bill of complaint "for as much therefor as complainant has been so above cheated," excepting only that this defendant had knowledge and notice of the issuance

of patents to the persons under whom it acquired title as the issuance of such patents is alleged in paragraph XII of said bill of complaint, and excepting also that this defendant had knowledge and notice of the conveyances alleged in paragraph XXII of said bill of complaint in the chains of title to the property [94] afterwards conveyed, as therein set forth, to this defendant, and had knowledge of the conveyances to this defendant therein alleged.

5.

Defendant denies that it took the title to any of the lands described in said bill of complaint well knowing or knowing at all that the entries of such lands, or any of them, or the titles issued thereupon, or upon any of them, were unlawful or corrupt or fraudulent or invalid or voidable, either at the suit of the United States or otherwise.

Defendant denies that it took the titles or any of them conveyed to it, as set forth in the said bill of complaint, without the payment of any valuable or other consideration therefor. Defendant denies that it holds or ever held in trust for any person whatsoever the title to any property alleged in the Complaint to have been conveyed to it.

6.

As to all of the other allegations and averments of the said bill of complaint not hereinabove admitted or denied by this defendant, this defendant alleges that it is a stranger as to all of the same and has no knowledge, information or belief concerning the same sufficient to enable it to answer the same or any part thereof, and therefore, for want of such knowledge,

information or belief, denies the same so as to leave, and it leaves, the complainant to make such proof thereof as it shall be able to produce.

7.

That the patents for the land afterwards conveyed to this defendant, as set forth in the bill of complaint, [95] were made and issued at the dates respectively set forth in the said bill of complaint, and thereupon and thereby the said patentees respectively acquired the possession and the right to possession of the lands said patents respectively described, and the said possession and right to possession was transferred to and taken by the respective grantees claiming under said patentees respectively, as set forth in the said bill of complaint, from time to time, and the same finally passed from the grantors respectively of this defendant to this defendant at the time of the conveyances to this defendant as set forth in the said bill of complaint.

8.

That the said conveyances to Idaho Trust Company set forth in said bill of complaint, while absolute in terms, were made, in fact, in trust, and for the purpose of securing the payment of money, the terms of such trusts and the provisions concerning securing the payment of money having been executed in writing between said Trust Company and the grantors in the said deeds conveying property to said Trust Company, including the husbands and wives of such grantors; that in and by the terms of the said agreements defining said trusts and the liens which should exist to secure the payment of moneys

as aforesaid, it was provided that there should be a lien upon the lands described in the said conveyances to said Trust Company to secure the payment of all sums of money owing to said Trust Company or to this defendant, at the time of the execution of said deeds respectively to said Trust Company, or at any time thereafter, from the parties to the said deed or to the said instrument concerning trusts and liens thereunder, or any of them. [96]

9.

That at the time of the execution of the said conveyance from William F. Kettenbach and George H. Kester and their wives to said Trust Company, and the said agreement defining the trusts and liens under said conveyance, said Trust Company advanced and loaned to the said George H. Kester as a part of the consideration for the said conveyance and on the faith of the security to be afforded thereby the sum of twenty thousand dollars, the same to be repaid with interest at the rate of eight per cent per annum, and at the time of the execution of said deed and the said other instrument concerning trusts and liens and said George H. Kester was owing to Idaho Trust Company the sum of five thousand dollars, and interest thereon at the rate of eight per cent per annum on account of a loan in the amount of five thousand dollars theretofore made to the said George H. Kester; that the said George H. Kester is still owing to Idaho Trust Company the said sum of twenty thousand dollars and the said sum of five thousand dollars, which indebtedness is now evidenced by a note of his to said Trust Company for

the principal sum of twenty-five thousand dollars and interest, and no part of the principal sum of the said note has been paid, and the whole amount thereof, with interest is due, owing and unpaid, and is secured by a lien upon the land described in the deed to said Trust Company.

10.

That at the date of the deed to Idaho Trust Company from Kester and Kettenbach described in the said bill of complaint and of the instrument defining the trusts and liens under said deed, said George H. Kester was indebted to this defendant in the principal sum of twenty thousand dollars and interest, and Naylor & Norlin were [97] indebted to this defendant at that time in the sum of \$30,806.42, and the said deed to Idaho Trust Company was made for the purpose, among other things, of securing the said indebtedness of George H. Kester to this defendant in the sum of twenty thousand dollars and interest, and also for the purpose of securing his guarantee to this defendant of the payment of the said sum of \$30,806.42; that the said George H. Kester is still owing to this defendant the said sum of twenty thousand dollars and interest thereon, no part of the said principal sum having been paid, and still owing to this defendant on his guarantee of the said sum of \$30,806.42 the sum of \$8,000.00 and interest thereon, which amount is still due and unpaid to this defendant, on account of the said original indebtedness of \$30,806.42.

That said George H. Kester also executed his note to Idaho Trust Company September 30, 1909, for

\$10,511.87, an interest at eight per cent per annum, due December 30, 1909, which represents money advanced at different times and interest thereon, and all which indebtedness of George H. Kester is secured by a lien upon the land described in said deed from George H. Kester and William F. Kettenbach to Idaho Trust Company.

11.

That since the execution of the said deed by said Kester and Kettenbach to the Idaho Trust Company and the agreement in connection with the same, concerning the trusts and liens under said deed, the said William F. Kettenbach borrowed from said Lewiston National Bank \$2,000.00 on the 20th day of December, 1908, and \$10,000.00 on March 9, 1909, for which he gave his notes respectively, and the [98] whole amount of the principal sum of said notes is still due and unpaid and the same, together with interest due thereon, are secured by the land described in said deed from Kester and Kettenbach to Idaho Trust Company.

12.

That William F. Kettenbach borrowed from Idaho Trust Company on the 13th of October, 1909, the sum of \$4,579.00, for which he gave said company his note, and the said sum, together with interest thereon, is still due and unpaid and owing to the said Trust Company, and is secured by the lien under said deed; that the said William F. Kettenbach on or about the 13th day of May, 1909, gave to said Idaho Trust Company his note for the sum of \$16,109.25 on account of money then due and owing

from him to said Idaho Trust Company, on which note there is still due and unpaid the sum of \$7,929.25, together with interest from May 13, 1909, at six per cent per annum, which sum is also secured by the lien under said deed.

13.

That the conveyance from Kittie E. Dwyer and husband to Idaho Trust Company, described in the bill of complaint, though absolute in terms, was made upon certain trusts and to secure indebtedness of said Kittie E. Dwyer and husband, or either of them, either then owing or thereafter at any time to become owing to Idaho Trust Company or Lewiston National Bank as defined in an instrument executed at the date of said deed between said Kittie E. Dwyer and husband and said Idaho Trust Company; that the said deed and said instrument last mentioned bore date the 31st day of December, 1908, and on the date of said deed and said instrument said Kittie E. Dwyer and [99] husband executed to the Lewiston National Bank their note for the sum of \$14,056.00, with interest at ten per cent per annum, evidencing indebtedness of the said Kittie E. Dwyer and husband to said bank existing at the date of said deed and agreement, and the larger portion of which had existed since the 8th day of July, 1907, on which date the said Kittie E. Dwyer and husband executed a mortgage to said bank to secure notes to said bank payable to said bank aggregating the principal sum of \$12,100.00, which sum is included in the note above mentioned for the sum of \$14,056; that on the 13th day of October, 1909, the said Kittie

E. Dwyer and husband executed and delivered to Idaho Trust Company their promissory note for the principal sum of \$15,000, with interest thereon at the rate of ten per cent per annum to secure money due and owing said Trust Company on account of a loan thereof made to the makers of said note; that no part of the principal sum of said note has been paid, and the same, with interest accrued thereon, is owing to said Idaho Trust Company and secured by a lien under said deed from said Kittie E. Dwyer and husband to said Trust Company; that said note for \$14,056 was assigned to Idaho Trust Company and is renewed and included in said note for \$15,000.00.

14.

On the same date also the said Kittie E. Dwyer and husband executed another note to said Idaho Trust Company for the principal sum of \$3,450.00, and interest at the rate of ten per cent per annum to secure indebtedness in that amount consisting of a loan made to said Kittie E. Dwyer and husband; that no part of the principal sum of said last mentioned note has been paid and the same, with interest accrued thereon, is owing to said Idaho [100] Trust Company and secured by a lien under said deed. That said deed from Kettenbach and Kester to Idaho Trust Company and said mortgage from said Kittie E. Dwyer and husband to said bank and said deed from said Kittie E. Dwyer and husband to said Trust Company were all duly acknowledged and the acknowledgments thereof were duly certified thereon and they were duly filed for record in the Recorder's

office of said Nez Perce County on the following dates respectively, to wit: July 10th, 1907, July 10th, 1907 and January 4th, 1909, and all of the same and all advances made thereunder were received and made in the usual and ordinary course of business and in good faith, believing that the titles transferred were good and valid titles.

15.

That Robert O. Waldman conveyed the land referred to in the bill of complaint as patented to him to Clarence W. Robnett May 26, 1903, by a deed duly acknowledged and recorded in the Recorder's office of Nez Perce County, Idaho, October 2, 1903, in Book 25, page 329, for a consideration therein expressed and recited of \$1,500.00; that said Clarence W. Robnett and his wife, Jennie M. Robnett, executed a mortgage to John F. McKissick on the said land, dated September 24, 1903, which was duly acknowledged and recorded in Book P. of Mortgages, page 447, in the Recorder's office of Nez Perce County, Idaho, on the 2d day of October, 1903, to secure the sum of \$500.00 and interest; that thereafter the said Clarence W. Robnett and wife conveyed the said land by a warranty deed to Elizabeth White duly acknowledged by the grantors and recorded July 8, 1907, in the Recorder's office of Nez Perce County, Idaho; [101] and thereafter, and on the 25th day of October, 1907, the said Elizabeth White conveyed the said lands to this defendant, Lewiston National Bank, by a conveyance duly acknowledged by her and recorded in the Recorder's office of Nez Perce County on October 28, 1907, in

Book 86 of Deeds, at page 353; and at the time of the said conveyance by Elizabeth White to the Lewiston National Bank, as aforesaid, said Clarence W. Robnett also executed a quitclaim deed to the Lewiston National Bank to complete and perfect the title thereto, which deed was duly acknowledged by said Clarence W. Robnett and his wife and recorded October 28, 1907, in Book 86 of Deeds, page 352, records of Nez Perce County, Idaho; that the consideration paid for said land by Lewiston National Bank was the sum of \$1,200.00 and consisted of indebtedness due and owing to the Bank prior to the execution of said conveyance, in full satisfaction and payment of which indebtedness the said conveyances to the bank of the said land were received.

16.

That Van V. Robertson, on the 20th day of May, 1903, the date of making final proof upon the land described in the bill of complaint as patented to the said Robertson, executed to Clarence W. Robnett a mortgage thereon to secure the sum of \$500.00, which mortgage was duly acknowledged so as to be entitled to record, and was filed for record in the Recorder's office of Shoshone County, Idaho, February 15, 1904; that that portion of Shoshone County, including the said lands was annexed to Nez Perce County as the result of the election of November 4, 1904, pursuant to an act of the Legislature of Idaho of 1903; that thereafter and on the [102] 27th day of September, 1904, said Van V. Robertson and his wife executed and delivered to Lewiston National Bank a conveyance of the said lands for the

consideration then paid of \$580.00; that the consideration so paid consisted of \$580.00 due upon the indebtedness secured by the said mortgage from Van V. Robertson and wife, then owned and held by said Bank; that the said deed was duly acknowledged by Van V. Robertson and his wife, the acknowledgment thereof duly certified thereon so as to entitle the same to record and it was duly filed for record in the Recorder's office of Shoshone County, Idaho, on October 10, 1904, and recorded therein in Book 26 of Deeds, page 429, and transcribed therefrom to the records of Nez Perce County, Idaho, in Book 91 of Deeds, page 35.

17.

That Drury M. Gammon conveyed the land referred to in the bill of complaint as patented to him to Clarence W. Robnett by a deed dated October 9, 1903, and recorded November 16, 1904, in the Recorder's office of Shoshone County, Idaho, Book 26 of Deeds, page 512, said deed having been duly acknowledged by the grantor and the acknowledgment thereof duly certified thereon so as to admit the same to record, and the record thereof being shown in Transcript record in Nez Perce County, Book 91 of Deeds, page 84; that thereafter and on November 25, 1904, said Clarence W. Robnett and Jennie M. Robnett, his wife, executed and delivered to Lewiston National Bank a conveyance for the said last-mentioned lands, in consideration of the sum of Six Hundred Dollars, said conveyance being dated November 25, 1904, and duly acknowledged by the grantors and the acknowledgment thereof duly cer-

tified thereon so as to entitle the same to record, and the said deed was filed for record in the Recorder's office of Nez Perce County, Idaho, December 20, 1904, and recorded [103] in Book 78 of Deeds, at page 228; that the consideration mentioned in said deed for the said land, \$590.00 was indebtedness prior to the date of said deed contracted, and on the date of said deed due, owing and unpaid to the Lewiston National Bank in full satisfaction of which said conveyance was received.

That at the time of the receipt by said bank of the conveyances aforesaid and the payments of the considerations therefor respectively, as aforesaid, it had no knowledge, information or notice of any nature of the facts which are alleged in the said bill of complaint touching the illegality or unlawfulness of the entries of said lands or any of them, and the said conveyances and transfers to it were made in the ordinary course of business and in good faith, believing that the titles transferred to and received by it were good and valid titles.

18.

That all of the said titles originated in patents made by the United States under the Timber & Stone Act of June 3, 1878, prior to any of the transfers to Lewiston National Bank as aforesaid, and the full sum of \$2.50 per acre was paid to the United States by the entrymen at the time of making final proof pursuant to which said patents issued, and since the date of making said final proofs respectively all State and County and other taxes levied and assessed upon said lands have been paid by the patentees and

those claiming under them respectively up to this time. [104]

19.

And this defendant, further answering, denies that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and prays the same advantage of this answer as if it had pleaded or demurred to the said bill of complaint, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

LEWISTON NATIONAL BANK,
By FRANK W. KETTENBACH,
President.

Attest: EDWARD C. SMITH,
Cashier.

JAMES E. BABB,
Postoffice Address and Residence, Lewiston, Idaho,
Solicitor and of Counsel for Defendant, Lewiston National Bank.

[Endorsed]: Filed Dec. 6, 1909. A. L. Richardson, Clerk. [105]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST

COMPANY, THE LEWISTON NATIONAL BANK, OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KITTIE E. DWYER, POTLATCH LUMBER COMPANY, ROBERT O. WALDMAN,

Defendants.

Answer of Potlatch Lumber Co. [to Bill of Complaint].

Answer of Potlatch Lumber Company, one of the defendants, to the bill of complaint of United States of America, complainant.

This defendant, Potlatch Lumber Company, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, says:

1.

This defendant admits the allegations of paragraphs [106] numbered I and II of the said bill of complaint.

2.

This defendant admits the following portions of paragraph XII of the said bill of complaint, to wit:

From and including the words "Rowland A. Lambdin, on the 25th day of April, 1902," to and including the words "by the United States conveying to the said Fred W. Shaeffer the tract last aforesaid."

This defendant also admits the following portion of paragraph XXII of said bill of complaint, to wit:

From and including the words therein "The said Ivan R. Cornell, Rowland A. Lambdin, and Fred W. Shaeffer, having as aforesaid made entries" to and including the words in said paragraph "by which said body corporate the said lands and the titles thereto are now held."

3.

Defendant denies that it took the title to any of the real property described in said bill of complaint with the full knowledge or any knowledge or with full notice or any notice, or with full information or any information, or with full advice or any advice or concerning the facts or any of them in the said bill of complaint alleged from and including paragraph III in said bill of complaint to, but not including, the words in paragraph XXII, of said bill of complaint, "the said corporate defendants having taken the titles with the full knowledge, notice, information and advice of and concerning the facts hereinbefore alleged," excepting only that this defendant had knowledge, and notice of the issuance to the said Rowland A. Lambdin, Ivan R. Cornell, and Fred W. Shaeffer of patents, as the issuance of said patents is alleged in paragraph XII of the said bill of complaint; [107] and excepting also that this defendant had knowledge and notice of the conveyances alleged in the

following portion of paragraph XXII of the said bill of complaint, to wit:

From and including the words in said paragraph XXII "The said Ivan R. Cornell, Rowland A. Lambdin, and Fred W. Shaeffer, having as aforesaid made entries" to and including the words in said paragraph XXII "by which said body corporate the said lands and the titles thereto are now held."

Defendant denies that it took the title to any of the lands described in the said bill of complaint well knowing or knowing at all that the entries on such lands or any of them, or the titles issued thereupon, or upon any of them, were unlawful or corrupt or fraudulent or invalid, or voidable, either at the suit of the United States or otherwise.

4.

As to all of the other allegations and averments of the said bill of complaint not hereinabove admitted or denied by this defendant, this defendant alleges that it is a stranger as to all of the same and has not knowledge or information or belief concerning the same sufficient to enable it to answer the same or any part thereof, and therefore, for want of such knowledge, information or belief, denies the same so as to leave, and it leaves, the complainant to make such proof thereof as it shall be able to produce.

5.

That the patent to Ivan R. Cornell referred to in the bill of complaint conveying lands in the said bill of complaint alleged to have been afterwards acquired by [108] this defendant was dated and issued September 9, 1904, and thereby the said Ivan R. Cornell and those claiming under him successively

respectively, as hereinafter set forth, acquired possession and right to the possession of the land in said patent described, and they successively respectively retained the same thereafter until the conveyances of the same by them successively respectively hereinafter set forth.

6.

That said Ivan R. Cornell, after the making of final proof upon the said land last mentioned and the issuance of final certificate therefor from the United States Land Office at Lewiston, Idaho, and on, to wit, about the 29th day of September, 1903, executed and delivered to W. F. Kettenbach and George H. Kester a warranty deed in writing for the last above-mentioned land, being the land described in the patent to Ivan R. Cornell; that the said deed recited that it was made in consideration of the sum of \$1,000.00, and was acknowledged September 29, 1903, by the said Cornell, an unmarried man, before a notary public and the acknowledgment thereof was duly certified thereon under the hand and seal of the said notary public so as to entitle the said deed to record, and the said deed was thereafter and on the 10th day of October, 1903, filed for record in the Recorder's office of Latah County, Idaho, and recorded therein in Book 41 of Deeds, at page 28; that thereafter and on the 21st day of August, 1906, the said W. F. Kettenbach and wife and George H. Kester and wife executed and delivered to this defendant their warranty deed for the real property last above mentioned, wherein and whereby they conveyed and warranted the said lands [109] to this defendant;

that said deed was executed and delivered for a consideration of \$2,200.00, which sum was paid by this defendant to the said W. F. Kettenbach and George H. Kester at the time of the execution and delivery of the said deed; that the said deed was acknowledged by the said William F. Kettenbach and wife and the said George H. Kester and wife before a notary public and their acknowledgment thereof was duly certified thereon by the said notary public under his hand and official seal so as to entitle the said deed to record, and the said deed was on October 9, 1906, filed for record in the Recorder's office Latah County, Idaho, and duly recorded therein in Book 43 of Deeds, at page 139.

That on and after the conveyance by the said Ivan R. Cornell of the said lands to W. F. Kettenbach and George H. Kester and until the conveyance by the said W. F. Kettenbach and George H. Kester to this defendant, the said W. F. Kettenbach and George H. Kester were in the possession and entitled to the possession of the said real property.

That at the time of the execution and delivery by the said William F. Kettenbach and wife and George H. Kester and wife of the said deed to this defendant, and at the time of the recording thereof and the payment of the consideration therefor by this defendant, as aforesaid, this defendant had no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality, or unlawful conduct set forth and alleged in the said bill of complaint, and the said deed was taken and the

consideration therefor paid in the usual and ordinary course of business and in good faith; that this defendant and defendant's predecessors in the title to [110] the real estate last above mentioned, as hereinabove set forth, have regularly and annually paid taxes for State and County purposes levied and assessed upon the said real estate; that the said real property was patented by the United States to the said Ivan R. Cornell under the Act of Congress of June 3, 1878, known as the Timber & Stone Act, and acts amendatory thereof, and for and in consideration of the sum of \$344.40, which amount was paid by the said Ivan R. Cornell to the Receiver of the United States Land Office at Lewiston, Idaho, for the said lands, on September 10, 1903.

7.

That the patent to Fred W. Shaeffer referred to in the bill of complaint conveying lands in the said bill of complaint alleged to have been afterwards acquired by this defendant was dated and issued January 28, 1904, and thereby the said Fred W. Shaeffer and those claiming under him successively respectively, as hereinafter set forth, acquired possession and right to the possession of the land in said patent described, and they successively respectively retained the same thereafter until the conveyances of the same by them successively respectively hereinafter set forth.

8.

That the said Fred W. Shaeffer, after the making of final proof upon the land last mentioned and the issuance of final certificate therefor from the United

States Land Office at Lewiston, Idaho, and on, to wit, about July 26, 1902, executed and delivered to W. F. Kettenbach and George H. Kester a warranty deed in writing for the said land, being the land described in the patent to Fred W. Shaeffer; that the said deed recited [111] that it was made in consideration of the sum of \$800.00, and was acknowledged July 26, 1902, by the said Fred W. Shaeffer, an unmarried man, before a notary public and the acknowledgment thereof was duly certified thereon under the hand and official seal of the said notary public so as to entitle the said deed to record, and the said deed was thereafter and on the 8th day of June, 1903, filed for record in the Recorder's office of Latah County, Idaho, and recorded therein in Book 35 of Deeds, at page 411; that thereafter and on the 17th day of June, 1903, the said W. F. Kettenbach and wife and George H. Kester and wife executed and delivered to this defendant their warranty deed for the land last above described and also the land described in the patent to Rowland A. Lambdin, hereinafter mentioned, wherein and whereby they conveyed and warranted the said lands to this defendant; that said deed was executed and delivered for a consideration of \$6,000.00, which sum was paid by this defendant to the said W. F. Kettenbach and George H. Kester at the time of the execution and delivery of the said deed; that the said deed was acknowledged by the said William F. Kettenbach and wife and the said George H. Kester and wife before a notary public and their acknowledgments thereof was duly cer-

tified thereon by the said notary public under his hand and official seal so as to entitle the said deed to record, and the said deed was on June 18, 1903, filed for record in the Recorder's office of Latah County, Idaho, and duly recorded therein in Book 39 of Deeds at page 99.

That on and after the conveyance by the said Fred W. Shaeffer of the said land in the patent to him described to W. F. Kettenbach and George H. Kester and [112] until the conveyance by the said W. F. Kettenbach and George H. Kester to this defendant, the said W. F. Kettenbach and George H. Kester were in the possession and entitled to the possession of the said real property.

That at the time of the execution and delivery by the said William F. Kettenbach and wife and George H. Kester and wife of the said deed to this defendant, and at the time of the recording thereof and the payment of the consideration therefor by this defendant, as aforesaid, this defendant had no knowledge, notice, or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality, or unlawful conduct set forth and alleged in the said bill of complaint, and the said deed was taken and the consideration therefor paid in the usual and ordinary course of business and in good faith; that this defendant and defendant's predecessors in the title to the real estate last above mentioned, as hereinbefore set forth, have regularly and annually paid taxes for State and county purposes levied and assessed upon the said real estate; that the said real

property was patented by the United States to the said Fred W. Shaeffer under the Act of Congress of June 3, 1878, known as the Timber & Stone Act, and acts amendatory thereof, and for and in consideration of the sum of \$421.90, which amount was paid by the said Fred W. Shaeffer to the Receiver of the United States Land Office at Lewiston, Idaho, for the said lands on June 25, 1902.

9.

That the patent to Rowland A. Lambdin referred to in the bill of complaint conveying lands in the said bill of complaint alleged to have been afterwards acquired [113] by this defendant was dated and issued January 28, 1904, and thereby the said Rowland A. Lambdin and those claiming under him successively respectively, as hereinafter set forth, acquired possession and right to the possession of the land in said patent described, and they successively respectively retained the same thereafter until the conveyances of the same by them successively respectively hereinafter set forth.

10.

That the said Rowland A. Lambdin, after the making of final proof upon the land last mentioned and the issuance of final certificate therefor from the United States land office at Lewiston, Idaho, and on, to wit, about July 22, 1902, executed and delivered to William F. Kettenbach and George H. Kester a warranty deed in writing for the said land, being the land described in the patent to Rowland A. Lambdin; that the said deed recited that it was made in consideration of the sum of \$800.00, and

was acknowledged July 22, 1902, by the said Rowland A. Lambdin and wife before a notary public and the acknowledgment thereof was duly certified thereon under the hand and official seal of the said notary public so as to entitle the said deed to record, and the said deed was thereafter and on June 8, 1903, filed for record in the Recorder's office of Latah County, Idaho, and recorded therein in Book 35 of Deeds, at page 412; that thereafter and on the 17th day of June, 1903, the said William F. Kettenbach and wife and George H. Kester and wife executed and delivered to this defendant their warranty deed for the *last* above described and the land described in the patent to Fred W. Shaef-fer, [114] hereinbefore mentioned, wherein and whereby they conveyed and warranted the said lands to this defendant; that said deed was executed and delivered for a consideration of \$6,000.00, which sum was paid by this defendant to the said W. F. Kettenbach and George H. Kester at the time of the execution and delivery of the said deed; that the said deed was acknowledged by the said William F. Kettenbach and wife and the said George H. Kester and wife before a notary public and their acknowledgment thereof was duly certified thereon by the said notary public under his hand and official seal so as to entitle the said deed to record, and the said deed was on June 18, 1903, filed for record in the Recorder's office of Latah County, Idaho, and duly recorded therein in Book 39 of Deeds, at page 99.

That on and after the conveyance by the said Row-

land A. Lambdin and wife of the said land in the patent to the said Rowland A. Lambdin described to W. F. Kettenbach and George H. Kester and until the conveyance by the said W. F. Kettenbach and George H. Kester to this defendant, the said W. F. Kettenbach and George H. Kester were in the possession and entitled to the possession of the said real property.

That at the time of the execution and delivery by the said William F. Kettenbach and wife and George H. Kester and wife of the said deed to this defendant, and at the time of the recording thereof and the payment of the consideration therefor by this defendant, as aforesaid, this defendant had no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, [115] illegality, or unlawful conduct set forth and alleged in the said bill of complaint, and the said deed was taken and the consideration therefor paid in the usual and ordinary course of business and in good faith; that this defendant and defendant's predecessors in the title to the real estate last above-mentioned, as hereinbefore set forth, have regularly and annually paid taxes for State and county purposes levied and assessed upon the said real estate; that the real property last described was patented by the United States to the said Rowland A. Lambdin under the Act of Congress of June 3, 1878, known as the Timber & Stone Act, and acts amendatory thereof, and for and in consideration of the sum of \$400.00, which amount was paid by the said Row-

land A. Lambdin to the Receiver of the United States land office at Lewiston, Idaho, for the said lands on July 22, 1902.

And this defendant, further answering, denies that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and prays the same advantage of this answer as if it had pleaded or demurred to the said bill of complaint; and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

POTLATCH LUMBER COMPANY,

By C. A. WEYERHÆUSER,

President.

Attest: F. H. BELL,

Secretary.

JAMES E. BABB,

Solicitor and of Counsel for Defendant, Potlatch Lumber Company, Residence and P. O. Address, Lewiston, Idaho.

[Endorsed]: Filed Dec. 6, 1909. A. L. Richardson, Clerk. [116]

**[Answer of Curtis Thatcher and Eliza W. Thatcher
to Bill of Complaint.]**

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,

WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KITTIE E. DWYER, POTLATCH LUMBER COMPANY, ROBERT O. WALDMAN,

Defendants.

ANSWER OF DEFENDANTS ELIZA W. THATCHER AND CURTIS THATCHER.

The answer of Curtis Thatcher and Eliza W. Thatcher, defendants to the bill of complaint of the United States of America, complainant, in which bill the said Eliza W. Thatcher is named and designated Elizabeth W. Thatcher.

These defendants, Eliza W. Thatcher and Curtis Thatcher, now, and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception, or otherwise, that can, or may, be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or so much thereof as these defendants are advised it is material, or necessary for them, or either of them, to make answer to, [117] answering, say:

1.

Defendants admit the allegations of paragraph I

and II of the said bill of complaint.

2.

Defendants admit the following portions of paragraph XII of the said bill of complaint, to wit: From and including the words "John E. Nelson, on the 24th day of February, 1903," to and including the words, "John E. Nelson, the tract last aforesaid," and from and including the words "Soren Hansen, on the 28th day of February, 1903," to and including the words "Soren Hansen the tract last aforesaid."

And these defendants also admit the following portion of paragraph XXII of said bill of complaint, to wit: From and including the words "And the said John E. Nelson hereinabove named, and alleged to have made entry of a certain described tract," to and including the words, "Which conveyance to the said defendant Kettenbach appears not to have been recorded."

3.

Defendants deny that they, or either of them, took the title to any of the lands described in the said bill of complaint, with full, or any knowledge, or with full, or any notice, or with full, or any information, or with full, or any advice, of, or concerning the facts, or any of them in the said bill of complaint alleged, from and including paragraph III in the said bill of complaint, to and including all of paragraph XXII of said bill of complaint, excepting only that these defendants had knowledge and notice of the issuance of the Receiver's final receipts, and of patents to the said Soren Hansen and John E. Nelson,

as the issuance of said patents is [118] alleged in paragraph XII of the said bill of complaint, and that these defendants had knowledge and notice of the mortgages made by the said last-named entry-men to Curtis Thatcher, and of a conveyance made by John E. Nelson to Eliza W. Thatcher, and of a conveyance made by the said Soren Hansen to defendant William F. Kettenbach.

Defendants deny that they, or either of them, took the title to any of the lands described in said bill of complaint, well knowing, or knowing at all, that the entries of said lands, or any of them, or the title issued thereupon, or any of them, were unlawful, or corrupt, or fraudulent, or invalid, either at the suit of the United States, or otherwise.

4.

Defendants deny that the said Eliza W. Thatcher holds the title to the lands to her conveyed by the said John E. Nelson in secret, or any trust for her codefendants, or any of them, or for any other person, firm or corporation whatsoever, and deny that any other person or persons, firm or corporation whatsoever, except the said Eliza W. Thatcher has, or have, any right, title, interest or estate whatsoever, of, in, or to the said premises last mentioned.

5.

As to all of the other allegations and averments of the said bill of complaint not hereinabove admitted or denied by these defendants, these defendants allege that they are strangers, and each of them is a stranger, as to all of the same, and they have not, nor has either of them, knowledge, or information,

or belief concerning the same, sufficient to enable them, or either of them, to answer the same, or any part thereof, and [119] therefore for want of such knowledge, information and belief, they deny the same, so as to leave, and they do leave the complainant to make such proof thereof as it shall be able to produce.

6.

Defendant Curtis Thatcher for himself says, that he does not know that he, the said Curtis Thatcher, to his knowledge and belief, ever had, or did he claim or pretend to have any right, title, claim or interest of, in or to the estates or premises described in the said bill of complaint, or any part thereof, except that he received a mortgage from Soren Hansen mentioned in the said bill of complaint for the southeast quarter (SE. $\frac{1}{4}$ of section ten (10), in township thirty-nine (39) north, of range three (3) east of the Boise meridian, and a mortgage from the said John E. Nelson for the northeast quarter (NE. $\frac{1}{4}$) of section twenty-four (24), in township thirty-nine (39) north, of range two (2) east of the Boise meridian, for the several considerations in said mortgages expressed, both of which mortgages have been released by the said Curtis Thatcher. That this defendant Curtis Thatcher has never had, nor claimed, any right, title, claim, or interest of, in, or to the estates and premises described in the said bill of complaint, or any part thereof, excepting said lands described in said mortgages to the said Curtis Thatcher, both of which have been released, and this defendant does not now, nor did he at the time of the

filing of said bill of complaint, have, or claim, any right, title or interest of, in or to the estates and premises described in the said bill of complaint, or any part thereof, and this defendant Curtis Thatcher disclaims all right, title, and interest in and to the estates and premises [120] described in said bill of complaint, and every part thereof.

7.

And these defendants further answering deny that complainant is entitled to the relief, or any part thereof, in said bill of complaint demanded, and pray the same advantage of this answer as if they had pleaded or demurred to the said bill of complaint, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

E. W. THATCHER.

CURTIS THATCHER.

EUGENE A. COX,

Postoffice Address and Residence, Lewiston, Idaho,
Solicitor and Counsel for Defendants Eliza W.
Thatcher and Curtis Thatcher.

[Endorsed]: Filed December 6, 1909. A. L. Richardson, Clerk [121]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY.—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NA-
TIONAL BANK, OF LEWISTON, IDAHO,
THE CLEARWATER TIMBER COM-
PANY, THE WESTERN LAND COM-
PANY, GEORGE E. THOMPSON, ELIZA-
BETH W. THATCHER, CURTIS THAT-
CHER, ELIZABETH WHITE, EDNA P.
KESTER, ELIZABETH KETTENBACH,
MARTHA E. HALLETT, KITTIE E.
DWYER, POTLATCH LUMBER COM-
PANY, ROBERT O. WALDMAN,

Defendants.

**Answer of Idaho Trust Company [etc. to Bill of
Complaint].**

ANSWER OF IDAHO TRUST COMPANY.

The Answer of Idaho Trust Company, one of the
defendants, to the bill of complaint of the United
States of America, complainant.

This defendant, Idaho Trust Company, now and
at all times hereafter saving to itself all and all
manner of benefit or advantage of exception or other-

wise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, says: [122]

1.

This defendant admits the allegations of paragraphs numbered I and II in the said bill of complaint.

2.

The defendant admits the following portions of the allegations in paragraph XII in the said bill of complaint, to wit:

From and including the words in said paragraph XII "Van V. Robertson on the 25th day of February, 1903," to and including the words therein: "said Van V. Robertson the tract last aforesaid."

From and including the words therein "James C. Evans on the 24th day of March," to and including the words therein: "Evans the tract last aforesaid."

From and including the words therein "Lon E. Bishop on the 24th day of March," to and including the words therein: "United States conveying to the said Guy L. Wilson the tract last aforesaid."

From and including the words therein "Daniel W. Greenburg on the 26th day of April," to and including the words therein: "United States conveying to the said William E. Helkenberg the tract last aforesaid."

3.

This defendant also admits the following portion

of paragraph XXII of said bill of complaint, to wit:

From and including the words therein: "the said James C. Evans, Lon E. Bishop, Frederick W. Newman" to and including the words therein: "the Idaho Trust Company, a body corporate, organized and existing under and in virtue of the laws of the State of Idaho, by which said body corporate the said lands and the titles thereto are now held."

From and including the words therein: "The said [123] William McMillan and the said Hattie Rowland" to and including the words therein: "convey the said tracts to the defendant, the Idaho Trust Company."

And the following therein, to wit: "and the said lands and the titles thereto are now held by the defendant, the Idaho Trust Company."

From and including the words therein: "the said Van V. Robertson, hereinabove named and alleged to have made entry of a tract," to and including the words therein: "the Lewiston National Bank, by which body corporate the said titles herein alleged to have been conveyed to it are now held."

4.

Defendant denies that it took the title to any of the real property described in the said bill of complaint with the full knowledge or any knowledge, or with full notice or any notice, or with full information or any information, or with full advice or any advice of or concerning the facts or any of them in the said bill of complaint alleged from and including paragraph III of said bill of complaint to, but

not including, the words in paragraph XXII of said bill of complaint "for as much therefor as complainant has been so above cheated," excepting only that this defendant had knowledge and notice of the issuance of patents to the persons under whom it acquired title as the issuance of such patents is alleged in paragraph XII of said bill of complaint, and excepting also that this defendant had knowledge and notice of the conveyances alleged in paragraph XXII of said bill of complaint in the chains of title to the property afterwards conveyed, as therein set forth, to this defendant, and had knowledge of the conveyances to this defendant therein alleged. [124]

5.

Defendant denies that it took the title to any of the lands described in said bill of complaint well knowing or knowing at all that the entries of such lands, or any of them, or the titles issued thereupon, or upon any of them, were unlawful or corrupt or fraudulent or invalid or voidable, either at the suit of the United States or otherwise.

Defendant denies that it took the titles or any of them conveyed to it, as set forth in the said bill of complaint, without the payment of any valuable or other consideration therefor, and denies that it holds or ever held any of said property in any trust, except to secure the payment of money as hereinafter set forth.

6.

As to all of the other allegations and averments of the said bill of complaint not hereinabove admit-

ted or denied by this defendant, this defendant alleges that it is a stranger as to all of the same and has no knowledge, information or belief concerning the same sufficient to enable it to answer the same or any part thereof, and therefore, for want of such knowledge, information or belief, denies the same so as to leave, and it leaves, the complainant to make such proof thereof as it shall be able to produce.

7.

That the patents for the land afterwards conveyed to this defendant, as set forth in the bill of complaint, were made and issued at the dates respectively set forth in the said bill of complaint, and thereupon and thereby the said patentees respectively acquired the possession and the right to possession of the lands said patents respectively described, and the said possession [125] and right to possession was transferred to and taken by the respective grantees claiming under said patentees respectively, as set forth in the said bill of complaint, from time to time and the same finally passed from the grantors respectively of this defendant to this defendant at the time of the conveyances to this defendant as set forth in the said bill of complaint.

8.

That the said conveyances to this defendant set forth in said bill of complaint, while absolute in terms, were made, in fact, in trust and for purpose of securing the payment of money, the terms of such trusts and the provisions concerning securing the payment of money having been executed in writing between this defendant and the grantors in the said

deeds conveying property to this defendant, including the husbands and wives of such grantors; that in and by the terms of the said agreements defining said trusts and the liens which should exist to secure the payment of moneys as aforesaid, it was provided that there should be a lien upon the lands described in the said conveyances to this defendant to secure the payment of all sums of money owing to this defendant or to Lewiston National Bank, a corporation, at the time of the execution of said deeds respectively to this defendant, or at any time thereafter from the parties to the said deed or to the said instrument concerning trusts and liens thereunder, or any of them.

9.

That at the time of the execution of the said conveyance from William F. Kettenbach and George H. Kester and their wives to this defendant and the said agreement defining the trusts and liens under said conveyance, this defendant advanced and loaned to the said George H. [126] Kester as a part of the consideration for the said conveyance and on the faith of the security to be afforded thereby the sum of twenty thousand dollars, the same to be repaid with interest at the rate of eight per cent per annum, and at the time of the execution of said deed and the said other instrument concerning trusts and liens the said George H. Kester was owing to Idaho Trust Company the sum of five thousand dollars, and interest thereon at the rate of eight per cent per annum on account of a loan in the amount of five thousand dollars theretofore made to the said

George H. Kester; that the said George H. Kester is still owing to Idaho Trust Company the said sum of twenty thousand dollars and the said sum of five thousand dollars, which indebtedness is now evidenced by a note of his to said Trust Company for the principal sum of twenty-five thousand dollars and interest, and no part of the principal of the said note has been paid, and the whole amount thereof, with interest, is due, owing and unpaid, and is secured by a lien upon the land described in the deed to said Trust Company.

10.

That at the date of the deed to Idaho Trust Company from Kester and Kettenbach described in the said bill of complaint and of the instrument defining the trusts and liens under said deed, said George H. Kester was indebted to the Lewiston National Bank in the principal sum of twenty thousand dollars and interest and Naylor & Norlin were indebted to said bank at that time in the sum of \$30,806.42, and the said deed to Idaho Trust Company was made for the purpose, among other things, of securing the said indebtedness of George H. Kester to said bank in the sum of twenty thousand dollars and interest, and also for the purpose of securing his guarantee to said bank of the payment of the said sum of \$30,806.42; [127] that the said George H. Kester is still owing to the said bank the said sum of twenty thousand dollars and interest thereon, no part of the said principal sum having been paid, and is still owing to said bank on his guarantee of the said sum of \$30,806.42 the sum of \$8,000.00 and interest

thereon, which amount is still due and unpaid to the said bank, on account of the said original indebtedness of \$30,806.42.

That George H. Kester also executed his note to Idaho Trust Company September 30, 1909, for \$10,-511.87 and interest at eight per cent per annum, due December 30, 1909, which represents money advanced at different times, and interest thereon, and all which indebtedness of George H. Kester is secured by a lien upon the land described in said deed from Kester and Kettenbach to Idaho Trust Company.

11.

That since the execution of the said deed by said Kester and Kettenbach to the Idaho Trust Company and the agreement in connection with the same, concerning the trusts and liens under said deed, the said William F. Kettenbach borrowed from said Lewiston National Bank \$2,000.00 on the 26th day of December, 1908, and \$10,000.00 on March 9, 1909, for which he gave his notes respectively, and the whole amount of the principal sum of said notes is still due and unpaid, and the same, together with interest due thereon are secured by the land described in said deed from Kester and Kettenbach to Idaho Trust Company.

12.

That William F. Kettenbach borrowed from Idaho Trust Company on the 13th of October, 1909, the sum of \$4,579.00, for which he gave said company his note, and the said sum, together with interest thereon, is still [128] due and unpaid and owing

to the said Trust Company, and is secured by the lien under said deed; that the said William F. Kettenbach, on or about the 13th of May, 1909, gave to said Idaho Trust Company his note for the sum of \$16,109.25 on account of money then due and owing from him to said Idaho Trust Company, on which note there is still due and unpaid the sum of \$7,929.25, together with interest from May 13, 1909, at six per cent per annum, which sum is also secured by the lien under said deed.

13.

That the conveyance from Kittie E. Dwyer and husband to Idaho Trust Company, described in the bill of complaint, though absolute in terms, was made upon certain trusts and to secure indebtedness of said Kittie E. Dwyer and husband, or either of them, either then owing or thereafter at any time to become owing to Idaho Trust Company or Lewiston National Bank as defined in an instrument executed at the date of said deed between said Kittie E. Dwyer and husband and said Idaho Trust Company; that the said deed and said instrument last mentioned bore date the 31st day of December, 1908, and on the date of said deed and said instrument said Kittie E. Dwyer and husband executed to the Lewiston National Bank their note for the sum of \$14,056.00, with interest at ten per cent per annum, evidencing indebtedness of the said Kittie E. Dwyer and husband to said bank existing at the date of said deed and agreement, and the larger portion of which had existed since the 8th day of July, 1907, on which date the said Kittie E. Dwyer and husband executed a

mortgage to said bank to secure notes to said bank payable to said bank aggregating the principal sum of \$12,100, which sum is included in the note above mentioned for the sum of \$14,056; that on the 13th day of October, 1909, the said Kittie E. [129] Dwyer and husband executed and delivered to Idaho Trust Company their promissory note for the principal sum of \$15,000, with interest thereon at the rate of ten per cent per annum to secure money due and owing said Trust Company on account of a loan thereof made to the makers of said note; that no part of the principal sum of said note has been paid, and the same, with interest accrued thereon, is owing to said Idaho Trust Company and secured by a lien under said deed from said Kittie E. Dwyer and husband to said Trust Company. That said note for \$14,056.00 was assigned to said Idaho Trust Company and was renewed by and included in said note for \$15,000.00.

14.

On the same date also the said Kittie E. Dwyer and husband executed another note to said Idaho Trust Company for the principal sum of \$3,450.00, and interest at the rate of ten per cent per annum to secure indebtedness in that amount consisting of a loan made to said Kittie E. Dwyer and husband; that no part of the principal sum of said last-mentioned note has been paid and the same, with interest accrued thereon, is owing to said Idaho Trust Company and secured by a lien under said deed.

15.

That all of the transfers and conveyances to Idaho

Trust Company hereinabove mentioned and all of the loans and advances made by it, and by said bank as hereinabove set forth, were made in the usual and ordinary course of business and in good faith, believing that the titles transferred as aforesaid were good and valid titles; that said deed of Kettenbach and Kester to Idaho Trust Company and said mortgage from said Kittie E. Dwyer and husband to said bank, and said deed from said Kittie E. Dwyer and husband to said Trust Company were duly acknowledged [130] by them and the acknowledgments thereof were duly certified thereon respectively and they were duly filed for record in the Recorder's office of said Nez Perce County, Idaho, on the following dates respectively, to wit, July 10, 1907, July 10, 1907, and January 4, 1909.

16.

That all of the said titles originated in patents made by the United States under the Timber & Stone Act of June 3, 1878, prior to any of the transfers to Idaho Trust Company as aforesaid, and the full sum of \$2.50 per acre was paid to the United States by the entryman at the time of making final proof pursuant to which said patents issued, and since the date of making said final proofs respectively all State and County and other taxes levied and assessed upon said lands have been paid by the patentees and those claiming under them respectively up to this time.

17.

And this defendant, further answering, denies that the complainant is entitled to the relief or any

part thereof in said bill of complaint demanded, and prays the same advantage of this answer as if it had pleaded or demurred to the said bill of complaint, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

IDAHO TRUST COMPANY,
By FRANK W. KETTENBACH,
President.

[Corporate Seal] Attest: R. C. HYKE,
Assistant Secretary.

JAMES E. BABB,
Postoffice Address and Residence, Lewiston, Idaho,
Solicitor and of Counsel for Defendant, Idaho
Trust Company.

[Endorsed]: Filed Dec. 6, 1909. A. L. Richardson, Clerk. [131]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NA-
TIONAL BANK OF LEWISTON, IDAHO,
THE CLEARWATER TIMBER COM-
PANY, THE WESTERN LAND COM-

PANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KIT-TIE E. DWYER, POTLATCH LUMBER COMPANY, ROBERT O. WALDMAN,
Defendants.

Answer of Clearwater Timber Co. [to Bill of Complaint].

ANSWER OF CLEARWATER TIMBER COMPANY.

The answer of Clearwater Timber Company, one of the defendants, to the bill of complaint of the United States of America, complainant.

This defendant, Clearwater Timber Company, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, says: [132]

1.

This defendant admits the allegations of paragraphs numbered I and II of the said bill of complaint.

2.

This defendant admits the following portions of the allegations of paragraph XII of the said bill of

complaint, to wit: From and including the words in said paragraph XII "William B. Benton on the 27th day of August" to and including the words "Joel H. Benton the tract last aforesaid"; and from and including the words in said paragraph XII "Pearl Washburn on the 19th day of January" to and including the words therein "Pearl Washburn the tract last aforesaid"; and from and including the words in said paragraph XII "William Haevernicks on the 27th day of October," to and including the words therein "Geary Vanartsdalen the tract last aforesaid."

This defendant also admits the following portion of paragraph XXII of said bill of complaint, to wit: From and including the words therein "the said William B. Benton and the said Joel H. Benton hereinabove named and alleged to have severally made entries" to and including the words "the same to the said defendant, the Clearwater Timber Company, and the said defendant, the Clearwater Timber Company, still holds titles to the said several tracts."

3.

Defendant denies that it took the title to any of the real property described in the said bill of complaint with full knowledge or any knowledge, or with full notice or any notice, or with full information or any information, or with full advice or any advice, of or concerning the facts or any of them in the said bill of complaint alleged from and including paragraph III in said bill of complaint to, but not including, the words in paragraph [133] XXII in said bill of complaint, "the said corporate

defendants having taken the titles with the full knowledge, notice, information and advice of and concerning the facts hereinbefore alleged," excepting only that this defendant had knowledge and notice of the issuance of patents to said William B. Benton, Joel H. Benton, Pearl Washburn, William Haevernick, Alma Haevernick, and Geary Van Artsdalen, as the issuance of said patents is alleged in paragraph 12 of the said bill of complaint; and except also that this defendant had knowledge and notice of the conveyances alleged in the following portion of paragraph XXII of said bill of complaint, to wit: From and including the words "the said William B. Benton and the said Joel H. Benton" to and including the words "and the said defendant, the Clearwater Timber Company, still holds the titles to the said several tracts."

Defendant denies that it took the title to any of the lands described in the said bill of complaint well knowing or knowing at all that the entries of such lands, or any of them, or the titles issued thereupon, or upon any of them, were unlawful or corrupt or fraudulent or invalid or voidable, either at the suit of the United States or otherwise.

4.

As to all of the other allegations and averments of the said bill of complaint not hereinabove admitted or denied by this defendant, this defendant alleges that it is a stranger as to all of the same, and has not knowledge or information or belief concerning the same sufficient to enable it to answer the same or any part thereof, and therefore, for want of such

knowledge, information or belief, denies the same so as to leave, and it leaves, the complainant to make such proof thereof as it shall be able to produce.
[134]

5.

That the patent to William B. Benton referred to in the bill of complaint conveying lands in the said bill of complaint alleged to have been afterwards acquired by this defendant was dated and issued February 25, 1904, and thereby the said William B. Benton and those *claiming him* successively acquired the possession and right to the possession of the land in said patent described, and they successively respectively retained the same thereafter until the conveyances of the same by them successively respectively, hereinafter set forth.

6.

That said William B. Benton, after the making of final proof upon the said land last mentioned and the issuance of final certificate therefor from the U. S. Land Office at Lewiston, Idaho, and on, to wit, about the 10th day of January, 1903, executed and delivered to C. W. Robnett a warranty deed in writing for the land described in the said patent to the said Benton; that the said deed recited that it was made in consideration of the sum of \$1,600.00, and was acknowledged January 10, 1903, by the said Benton before a notary public and the acknowledgment thereof was duly certified thereon under the hand and seal of the said notary so as to entitle the said deed to record, and the said deed was thereafter and on the 27th day of April, 1903, filed for record

in the Recorder's office of Nez Perce County, Idaho, and recorded therein in Book 24 of Deeds, at page 569; that thereafter and on the 15th day of March, 1904, the said Clarence W. Robnett and Jennie M. Robnett, his wife, executed and delivered to O. E. Guernsey their mortgage, in writing, upon the real estate described in said patent [135] to the said William B. Benton; that in and by the said mortgage the said Robnett and wife mortgaged the said land and other lands to secure the payment of their certain note of even date with said mortgage in the principal sum of \$3,000.00, with interest thereon at six per cent per annum; that said mortgage was duly acknowledged by the said Robnett and wife before a notary public and the acknowledgment thereof was duly certified thereon by the said notary public under his hand and official seal so as to entitle the said mortgage to record, and thereafter the said mortgage was filed for record in the Recorder's office of Nez Perce County, Idaho, on the 21st day of March, 1904, and recorded therein in Book P of Mortgages, at page 602; that on the said 15th day of March, 1904, the said Clarence W. Robnett and wife executed, acknowledged and delivered to the said O. E. Guernsey another mortgage upon the same real property to secure their additional note of even date in the principal sum of \$120.00; that the said mortgage was executed and acknowledged, and the acknowledgment certified thereon in the same manner as in the mortgage last above mentioned, and the same was thereafter and on the 21st day of March, 1904, filed for record in the Recorder's office of said Nez Perce

County, and recorded in Book P of Mortgages, at page 603; that the said Clarence W. Robnett received the full consideration in each of the said mortgages made to the said O. E. Guernsey at the time of the execution and recording thereof, to wit, the principal sum of \$3,120.00; that thereafter and on or about the 8th day of July, 1907, the said C. W. Robnett and Jennie M. Robnett executed and delivered to Elizabeth White their warranty deed, in writing, of the real estate last above mentioned, wherein and whereby they conveyed and warranted the said [136] real estate to the said Elizabeth White for the expressed consideration of one dollar and also for other valuable considerations, the said considerations being good, valuable and adequate considerations for the transfer of the said land; that the said warranty deed last mentioned was duly acknowledged by the said Robnett and wife before a notary public, and the said acknowledgment was duly certified thereon under the hand and official seal of the said notary so as to entitle the said deed to record, and the same was thereafter and on the 8th day of July, 1907, filed for record in the Recorder's office of said Nez Perce County, and duly recorded therein; that at the time of the conveyance of said real property last mentioned to said Elizabeth White, as aforesaid, and as a part of the consideration therefor, the said Elizabeth White paid in full the principal of the said mortgages to the said O. E. Guernsey, and all interest due thereon, and thereupon the said O. E. Guernsey executed, acknowledged, and delivered releases of said mortgages, and the said

releases were on the 8th day of July, 1907, filed for record in the Recorder's office of said Nez Perce County and duly recorded therein; that thereafter and on the 4th day of September, 1907, the said Elizabeth White executed and delivered to this defendant her warranty deed for the real property last above described, wherein and whereby she conveyed and warranted the same to this defendant; that said deed was executed and delivered for the sum of \$1,200.00, which was paid by this defendant to the said Elizabeth White at the time of the execution and delivery of the said deed; that the said deed was acknowledged by the said Elizabeth White before [137] a notary public and her acknowledgment thereof was duly certified thereon by the said notary public under his hand and official seal so as to entitle the said deed to record, and the said deed was on the 16th day of September, 1907, filed for record in the Recorder's office of Nez Perce County, Idaho, and duly recorded therein, in Book 94 of Deeds at page 57; that the said Elizabeth White at all times herein mentioned was a widow; that on and after the said conveyance by William B. Benton to the said C. W. Robnett until the said conveyance from C. W. Robnett to Elizabeth White, the said C. W. Robnett was in the possession and entitled to the possession of the said real property; and from the time of the conveyance by the said C. W. Robnett to the said Elizabeth White until the conveyance by the said Elizabeth White to this defendant the said Elizabeth White was in the possession and entitled to the possession of the said real property.

That at the time of the execution of the said mortgages by the said Clarence W. Robnett and wife to the said O. E. Guernsey and the filing and recording of the same in the Recorder's office as aforesaid, and at the time of the payment by the said O. E. Guernsey to the said C. W. Robnett of the consideration expressed in said mortgages as aforesaid, the said O. E. Guernsey had no knowledge, notice, or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality or unlawful conduct set forth and alleged in the said bill of complaint in this cause, and the said mortgages were taken and the consideration therefor advanced by the said O. E. Guernsey in the usual and ordinary course of [138] business and in good faith; that at the time of the conveyance by the said C. W. Robnett and wife to the said Elizabeth White and the recording of the said conveyance and the payment by her of the consideration therefor, she had no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality or unlawful conduct set forth and alleged in the said bill of complaint in this cause, and the said deed was taken and the consideration therefor paid in the usual and ordinary course of business and in good faith; that at the time of the execution and delivery by said Elizabeth White of her said deed to this defendant, and at the time of the recording thereof, and also at the time of the payment of the consideration thereof by this defendant as aforesaid, this defendant had no knowledge, no-

tice or information or any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality, or unlawful conduct set forth and alleged in the said bill of complaint in this cause, and the said deed was taken and the consideration therefor paid in the usual and ordinary course of business and in good faith; that this defendant and defendant's predecessors in the title to the real estate last above mentioned, as hereinabove set forth, have regularly and annually paid taxes for State and County purposes levied and assessed upon the said real estate; that the said real property was patented by the United States to the said William B. Benton on February 25, 1904; that the said patent made to the said William B. Benton was made under the Act of Congress known as the Timber & Stone Act, of June 3, 1878, and amendments thereto, and for and in consideration of the sum of \$400.00, which amount was [139] paid by the said William B. Benton to the Receiver of the United States Land Office at Lewiston, Idaho, for the said land on November 21, 1902.

7.

That the patent to Joel H. Benton referred to in the bill of complaint conveying lands in the said bill of complaint alleged to have been afterwards acquired by this defendant was dated and issued February 25, 1904, and thereby the said Joel H. Benton, and those claiming under him successively, acquired the possession and the right to the possession of the land in said patent described, and they successively respectively retained the same thereafter until the

conveyances of the same by them successively respectively hereinafter set forth.

8.

That said Joel H. Benton, after the making of final proof upon the said land last mentioned and the issuance of final certificate therefor from the U. S. Land Office at Lewiston, Idaho, and on, to wit, about the 29th day of December, 1902, with his wife, executed and delivered to C. W. Robnett a warranty deed in writing for the land described in the said patent to the said Benton; that the said deed recited that it was made in consideration of the sum of \$1,600.00, and was acknowledged December 29, 1902, by the said Benton and wife before a notary public and the acknowledgment thereof was duly certified thereon under the hand and seal of the said notary public so as to entitle the said deed to record, and the said deed was thereafter and on the 27th day of April, 1903, filed for record in the Recorder's office of Nez Perce County, Idaho, and recorded therein [140] in Book 24 of Deeds, at page 570; that thereafter and on the 15th day of March, 1904, the said Clarence W. Robnett and Jennie M. Robnett, his wife, executed and delivered to O. E. Guernsey their mortgage, in writing, upon the real estate described in said patent to the said Joel H. Benton; that in and by the said mortgage the said Robnett and wife mortgaged the said land and other lands to secure the payment of their certain note of even date with said mortgage in the principal sum of \$3,000.00, with interest thereon at six per cent per annum; that said mortgage was duly acknowledged by

the said Robnett and wife before a notary public and the acknowledgment thereof was duly certified, thereon by the said notary public under his hand and official seal so as to entitle the said mortgage to record, and thereafter the said mortgage was filed for record in the Recorder's office of Nez Perce County, Idaho, on the 21st day of March, 1904, and recorded therein in Book P of Mortgages at page 602; that on the said 15th day of March, 1904, the said Clarence W. Robnett and wife executed, acknowledged and delivered to the said O. E. Guernsey another mortgage upon the same real property to secure their additional note of even date in the principal sum of \$120.00; that the said mortgage was executed and acknowledged, and the acknowledgment certified thereon in the same manner as in the mortgage last above mentioned, and the same was thereafter and on the 21st day of March, 1904, filed for record in the Recorder's office of said Nez Perce County, and recorded in Book P of Mortgages, at page 603; that the said Clarence W. Robnett received the full consideration in each of the said mortgages made to the said O. E. Guernsey at the time of the execution and recording thereof, to wit, the principal sum of \$3,120.00; that thereafter [141] and on or about the 8th day of July, 1907, the said C. W. Robnett and Jennie M. Robnett executed and delivered to Elizabeth White their warranty deed, in writing, upon the real estate last above mentioned, wherein and whereby they conveyed and warranted the said real estate to the said Elizabeth White for the expressed consideration of one dollar and also for other

valuable considerations, the said considerations being good, valuable and adequate considerations for the transfer of the said land; that the said warranty deed last mentioned was duly acknowledged by the said Robnett and wife before a notary public and the said acknowledgment was duly certified thereon under the hand and official seal of the said notary so as to entitle the said deed to record, and the same was thereafter and on the 8th day of July, 1907, filed for record in the Recorder's office of said Nez Perce County, and duly recorded therein; that at the time of the conveyance of said real property last mentioned to said Elizabeth White, as aforesaid, and as part of the consideration therefor, the said Elizabeth White paid in full the principal of the said mortgages to the said O. E. Guernsey, and all interest due thereon, and thereupon the said O. E. Guernsey executed, acknowledged, and delivered releases of said mortgages, and the said releases were on the 8th day of July, 1907, filed for record in the Recorder's office of said Nez Perce County and duly recorded therein; that thereafter and on the 4th day of September, 1907, the said Elizabeth White executed and delivered to this defendant her warranty deed for the [142] real property last above described, wherein and whereby she conveyed and warranted the same to this defendant; that said deed was executed and delivered for the sum of \$1,600.00 which was paid by this defendant to the said Elizabeth White at the time of the execution and delivery of the said deed; that the said deed was acknowledged by the said Elizabeth White before a notary

public and her acknowledgment thereof was duly certified thereon by the said notary public under his hand and official seal so as to entitle the said deed to record, and the said deed was on the 16th day of September, 1907, filed for record in the Recorder's office of Nez Perce County, Idaho, and duly recorded therein, in Book 94 of Deeds, at page 58; that the said Elizabeth White at all times herein mentioned was a widow; that on and after the said conveyance by Joel H. Benton to the said C. W. Robnett until the said conveyance from C. W. Robnett to Elizabeth White, the said C. W. Robnett was in the possession and entitled to the possession of the said real property; and from the time of the conveyance by the said C. W. Robnett to the said Elizabeth White until the conveyance by the said Elizabeth White to this defendant the said Elizabeth White was in the possession and entitled to the possession of the said real property.

That at the time of the execution of the said mortgages by the said Clarence W. Robnett and wife to the said O. E. Guernsey and the filing and recording of the same in the Recorder's office as aforesaid, and at the time of the payment by the said O. E. Guernsey to the said C. W. Robnett of the consideration expressed in said mortgages as aforesaid, the said O. E. Guernsey had no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, [143] perjury, misrepresentation, illegality or unlawful conduct set forth and alleged in the said bill of complaint in this cause, and the said mortgages were taken and the

consideration therefor advanced by the said O. E. Guernsey in the usual and ordinary course of business and in good faith; that at the time of the conveyance by the said C. W. Robnett and wife to the said Elizabeth White and the recording of the said conveyance and the payment by her of the consideration therefor, she had no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality or unlawful conduct set forth and alleged in the said bill of complaint in this cause, and the said deed was taken and the consideration therefor paid in the usual and ordinary course of business and in good faith; that at the time of the execution and delivery by said Elizabeth White of her said deed to this defendant, and at the time of the recording thereof, and also at the time of the payment of the consideration therefor by this defendant, as aforesaid, this defendant had no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality, or unlawful conduct set forth and alleged in the said bill of complaint in this cause, and the said deed was taken and the consideration therefor paid in the usual and ordinary course of business and in good faith; that this defendant and defendant's predecessors in the title to the real estate last above mentioned, as hereinabove set forth, have regularly and annually paid taxes for State and County purposes levied and assessed upon the said real estate; that the said real property was patented by the United States to the [144] said Joel H.

Benton on February 25, 1904; that the said patent made to the said Joel H. Benton was made under the Act of Congress of June 3, 1878, known as the Timber & Stone Act, and amendments thereto, and for and in consideration of the sum of \$400.00, which amount was paid by the said Joel H. Benton to the Receiver of the United States Land Office at Lewiston, Idaho, for the said land on Nov. 21, 1902.

9.

That the patent to Pearl Washburn referred to in the bill of complaint conveying lands in the said bill of complaint alleged to have been afterwards acquired by this defendant was dated and issued July 2, 1904, and thereby the said Pearl Washburn and those claiming under her successively acquired the possession and the right to the possession of the land in said patent described, and they successively respectively retained the same thereafter until the conveyances of the same by them successively respectively hereinafter set forth.

10.

That after the making of final proof upon the said land last mentioned and the issuance of the final certificate therefor from the U. S. Land Office at Lewiston, Idaho, and after the issuance of patent to said land to the said Pearl Washburn by the United States, and on, to wit, May 23d, 1906, the said Pearl Washburn and Charles Washburn, her husband, executed and delivered to James B. McGrane a warranty deed in writing for the land described in the said patent to the said Pearl Washburn; that the said deed recited that it was made in consideration of the sum of

\$900.00, and was acknowledged May 23, 1906, by the said Pearl Washburn and husband before a notary public and the acknowledgment thereof was duly certified thereon under [145] the hand and seal of the said notary public so as to entitle the said deed to record, and the said deed was thereafter and on the 9th day of November, 1906, filed for record in the Recorder's office of Nez Perce County, Idaho, and recorded therein in Book 89 of Deeds, at page 496; and thereafter and on to wit, May 31, 1907, a quitclaim deed supposed to correct a defect in the deed last above mentioned was duly executed and acknowledged by the said Pearl Washburn and husband and filed for record in the office of the Recorder of Nez Perce County, and the same was duly recorded June 6, 1907; that thereafter and on the 8th day of May, 1907, the said James E. McGrane and Edna McGrane, his wife, executed, acknowledged, and delivered to John E. Chapman their warranty deed, in writing, wherein and whereby they conveyed and warranted the said lands last mentioned and other lands to the said John E. Chapman for a consideration of \$7,500.00; that the said warranty deed last mentioned was duly acknowledged by the said James B. McGrane and wife before a notary public and the said acknowledgment was duly certified thereon under the hand and official seal of the said notary so as to entitle the same to record and the same was thereafter and on June 8, 1907, filed for record in the Recorder's office of said Nez Perce County, and duly recorded therein; that thereafter and on June 7, 1907, the said John E. Chapman, an unmarried man, executed and

delivered to the Clearwater Timber Company, this defendant, his warranty deed for the real property last above described, and other lands, wherein and whereby he conveyed and warranted the said land to this defendant; that said deed was executed and delivered for a consideration of \$8,650.00, which sum was paid by this defendant to the said John E. Chapman at the time of [146] the execution and delivery of the said deed; that the said deed was acknowledged by the said John E. Chapman before a notary public and his acknowledgment thereof was duly certified thereon by the said notary public under his hand and official seal so as to entitle the said deed to record, and the said deed was on the 21st day of June, 1907, filed for record in the Recorder's office of Nez Perce County, Idaho, and duly recorded therein, in Book 88 of Deeds, at page 579. That on and after the conveyance by the said Pearl Washburn of the said land to the said James B. McGrane and until the conveyance of said land from James B. McGrane to the said John E. Chapman, the said James B. McGrane was in the possession and entitled to the possession of the said real property; and from the time of the conveyance by the said James B. McGrane to the said John E. Chapman until the conveyance by the said John E. Chapman to this defendant the said John E. Chapman was in the possession and entitled to the possession of the said real property.

That at the time of the conveyance of the said land by the said Pearl Washburn and husband to the said James B. McGrane and the recording of said conveyance and the payment by him of the consideration

therefor he had no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality, or unlawful conduct set forth and alleged in the said bill of complaint in this cause, and the said deed was taken and the consideration therefor paid in the usual and ordinary course of business and in good faith; that at the time of the execution and delivery by James E. McGrane and wife of their said deed to John E. Chapman, and the recording of said conveyance and the payment by the said Chapman of the [147] consideration therefor he had no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality, or unlawful conduct set forth and alleged in the said bill of complaint in this cause, and the said deed was taken and the consideration therefor paid in the usual and ordinary course of business and in good faith; that at the time of the execution and delivery by the said John E. Chapman of his said deed to this defendant, and at the time of the recording thereof and the payment of the consideration therefor, by this defendant, as aforesaid, this defendant had no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality, or unlawful conduct set forth and alleged in the said bill of complaint in this cause, and the said deed was taken and the consideration therefor paid in the usual and ordinary course of business and in good faith; that at the time of the execution and delivery

by the said John E. Chapman of his said deed to this defendant, and at the time of the recording thereof and the payment of the consideration therefor, by this defendant, as aforesaid, this defendant had no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality, or unlawful conduct set forth and alleged in the said bill of complaint, and the said deed was taken and the consideration therefor paid in the usual and ordinary course of business and in good faith; that this defendant and defendant's predecessors in the title to the real estate last above mentioned, as hereinabove set forth, have regularly and annually paid taxes for State and County purposes levied and assessed upon the said real estate; that the said [148] real property was patented by the United States to the said Pearl Washburn on July 2, 1904; that the said patent was made to the said Pearl Washburn under the Act of Congress of June 3, 1878, known as the Timber & Stone Act, and amendments thereto, and for and in consideration of the sum of \$300.00, which amount was paid by the said Pearl Washburn to the Receiver of the United States Land Office at Lewiston, Idaho, for the said land on April 16, 1903.

11.

That the patents to William Haevernick and Alma Haevernick referred to in the bill of complaint conveying lands in the said bill of complaint alleged to have been afterwards acquired by this defendant were dated and issued November 1, 1904, and thereby the said William Haevernick and the said Alma

Haevernick, and those claiming under them successively, acquired the possession and the right to possession of the land in the respective patents described, and they successively respectively retained the same thereafter until the conveyance of the same by them as hereinafter set forth.

12.

That said William Haevernick and Alma Haevernick, after the making of final proof upon the said lands last mentioned and the issuance of final certificates therefor from the U. S. Land Office at Lewiston, Idaho, and on, to wit, about the 18th day of January, 1904, executed and delivered to Frank W. Kettenbach a warranty deed, in writing, for the lands described in the said patents to William Haevernick and the said Alma Haevernick, that the said deed recited that it was made in consideration of the sum of \$650.00, and was acknowledged January 18, 1904, by the said William Haevernick and Alma Haevernick before a notary public and the acknowledgment thereof was duly certified thereon [149] under the hand and seal of the said notary public so as to entitle the said deed to record, and the said deed was thereafter and on the 25th day of January, 1904, filed for record in the Recorder's office of Shoshone County, Idaho, and recorded therein in Book 24 of Deeds at page 572; that on June 3, 1904, the said William Haevernick and Alma Haevernick, executed and delivered to Frank W. Kettenbach a warranty deed, in writing, for the lands described last hereinabove; that the said deed recited that it was made in consideration of the sum of \$650.00, and was acknowledged be-

fore a notary public by the said William Haevernick and Alma Haevernick and the acknowledgment thereof was duly certified thereon under the hand and seal of the said notary public so as to entitle the said deed to record, and the said deed was thereafter and on the 14th day of June, 1907, filed for record in the Recorder's office of Nez Perce County, Idaho, and recorded therein in Book 88 of Deeds, at page 574; that that portion of what was formerly Shoshone County, Idaho, in which was situated the lands described in the last-mentioned deed, was annexed to Nez Perce County, Idaho, by virtue of and in pursuance of an election held in November, 1904, pursuant to an Act of the Legislature of the State of Idaho passed and approved in the year 1903. That on June 12, 1907, the said Frank W. Kettenbach and Amy B. Kettenbach, his wife, executed and delivered to this defendant their warranty deed for the real property last above mentioned, wherein and whereby they conveyed and warranted the said lands to this defendant; that said deed was executed and delivered for a consideration of \$800.00, which sum was paid by this defendant to the said Frank W. Kettenbach at the time of the execution and delivery of the said deed; that the [150] said deed was acknowledged by the said Frank W. Kettenbach and wife before a notary public and their acknowledgment thereof was duly certified thereon by the said notary public under his hand and official seal so as to entitle the said deed to record, and the said deed was on the 13th day of July, 1907, filed for record in the Recorder's office of Nez Perce County, Idaho, and duly recorded therein, in Book 88 of

Deeds at page 607. That on and after the conveyance by the said William Haevernick and Alma Haevernick of the said lands to the said Frank W. Kettenbach to this defendant, the said Frank W. Kettenbach was in the possession and entitled to the possession of the said real property.

That at the time of the conveyance of the said lands by the said William Haevernick and the said Alma Haevernick to the said Frank W. Kettenbach and the recording of said conveyance and the payment by him of the consideration therefor, he had no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality, or unlawful conduct set forth and alleged in the said bill of complaint in this cause, and the said deed was taken and the consideration therefor paid in the usual and ordinary course of business and in good faith; that at the time of the execution and delivery by the said Frank W. Kettenbach and wife of the said deed to this defendant and at the time of the recording thereof and the payment of the consideration therefor by this defendant, as aforesaid, this defendant has no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality, or unlawful conduct set forth and alleged in the said bill of complaint, and the said deed was taken and the consideration therefor paid [151] in the usual and ordinary course of business and in good faith; that this defendant and defendant's predecessors in the title to the real estate last above men-

tioned, as hereinabove set forth, have regularly and annually paid taxes for State and County purposes levied and assessed upon the said real estate; that the said real property was patented by the United States to the said William Haevernick and the said Alma Haevernick under the Act of Congress of June 3, 1878, known as the Timber & Stone Act, and acts amendatory thereof, and for and in consideration of the sum of \$200.00, which amount was paid by the said William Haevernick, and the sum of \$100.00, which amount was paid by the said Alma Haevernick, to the Receiver of the United States Land Office at Lewiston, Idaho, for the said lands, on January 6, 1904.

13.

That the patent to Geary Van Artsdalen referred to in the bill of complaint conveying lands in the said bill of complaint alleged to have been afterwards acquired by this defendant was dated and issued November 1, 1904, and thereby the said Geary Van Artsdalen acquired the possession and the right to the possession of the lands in said patent described, and he retained the same thereafter until the conveyance of the same by him as hereinafter set forth.

14.

That after the issuance of patent to said land to the said Geary Van Artsdalen by the United States, and on, to wit, December 2, 1905, the said Geary Van Artsdalen, an unmarried man, executed and delivered to this defendant a warranty deed, in writing, for the land described in the said patent to Geary Van Artsdalen; that the said deed recited that it was made in

consideration of the sum of \$800.00, and was acknowledged December 13, 1905, by the [152] said Geary Van Artsdalen before a notary public and the acknowledgment thereof was duly certified thereon under the hand and seal of the said notary public so as to entitle the said deed to record, and the said deed was thereafter and on the 23d day of December, 1905, filed for record in the Recorder's office of Nez Perce County, Idaho, and recorded therein in Book 81 of Deeds, at page 399. That at the time of the execution and delivery by the said Geary Van Artsdalen of his said deed to this defendant, and at the time of the recording thereof and the payment of the consideration therefor, by this defendant, as aforesaid, this defendant had no knowledge, notice or information of any nature concerning the existence of any of the fraud, conspiracy, deception, perjury, misrepresentation, illegality, or unlawful conduct set forth and alleged in the said bill of complaint, and said deed was taken and the consideration therefor paid in the usual and ordinary course of business and in good faith; that this defendant and defendant's predecessor in the title to the real estate last above mentioned, as hereinbefore set forth, have regularly and annually paid taxes for State and county purposes levied and assessed upon the said real estate; that the said real property was patented by the United States to the said Geary Van Artsdalen on November 1st, 1904; that the said patent was made to the said Geary Van Artsdalen under the Act of Congress of June 3, 1878, known as the Timber & Stone Act, and acts amendatory thereof, and for and in consideration of

the sum of \$400.00, which amount was paid by the said Geary Van Artsdalen to the Receiver of the United States Land Office at Lewiston, Idaho, for the said land on January 11, 1904. [153]

And this defendant, further answering, denies that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and prays the same advantage of this answer as if it had pleaded or demurred to the said bill of complaint; and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CLEARWATER TIMBER COMPANY,

By J. A. HUMHICK,

President.

Attest: W. H. FAMHAM,

Assistant Secretary.

JAMES E. BABB,

Postoffice Address and Residence, Lewiston,
Idaho,

Solicitor and of Counsel for Defendant,
Clearwater Timber Company.

STILES W. BURR,

Postoffice Address, National German-American Bank Building, St. Paul, Minnesota,

Also Solicitor and of Counsel for Defendant,
Clearwater Timber Company.

[Endorsed]: Filed Dec. 6, 1909. A. L. Richardson, Clerk. [154]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, POTLATCH
LUMBER COMPANY et al.,
Defendants.

Replication to Answer [of Potlatch Lumber Co.].

REPLICATION TO ANSWER.

Replication of complainant in the above-entitled cause to the answer of the Potlatch Lumber Company, defendant.

This replicant, saving and reserving to itself, all advantage of exception, to the manifold insufficiencies, errors and uncertainties of the answer of the said defendant, the Potlatch Lumber Company, for replication thereto, says, that it will aver, maintain and prove its said bill of complaint to be true and sufficient, and that the said answer of the said defendant, the Potlatch Lumber Company is untrue, evasive and insufficient.

Wherefore, it prays relief as in its said Bill set forth.

PEYTON GORDON,

Special Assistant to the Attorney General, Solicitor
for Complainant.

[Endorsed]: Filed Jan. 3, 1910. A. L. Richardson, Clerk. [155]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, THE IDAHO
TRUST COMPANY et al.,
Defendants.

Replication to Answer [of Idaho Trust Co.].

REPLICATION TO ANSWER.

Replication of complainant in the above-entitled cause to the answer of the Idaho Trust Company, defendants.

This replicant, saving and reserving to itself all advantage of exception, to the manifold insufficiencies, errors and uncertainties of the answer of the said defendant, the Idaho Trust Company, for replication thereto says, that it will aver, maintain and prove its said bill of complaint to be true and sufficient, and that the said answer of the said defendant, the Idaho Trust Company is untrue, evasive and insufficient.

Wherefore, it prays relief as in its said Bill set forth.

PEYTON GORDON,
Special Assistant to the Attorney General, Solicitor
for Complainant.

[Endorsed]: Filed Jan. 3, 1910. A. L. Richardson, Clerk. [156]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, CURTIS THATCHER, ELIZABETH W. THATCHER et al.,

Defendants.

Replication to Answer [of Curtis Thatcher and Eliza W. Thatcher].

REPLICATION TO ANSWER.

Replication of complainant in the above-entitled cause to the answer of Curtis Thatcher and Eliza W. Thatcher, defendants.

This replicant, saving and reserving to itself all advantage of exception, to the manifold insufficiencies, errors and uncertainties of the answer of the said defendants, Curtis Thatcher and Eliza W. Thatcher, for replication thereto says, that it will aver, maintain and prove its said bill of complaint to be true and sufficient, and that the said answer of the said defendants, Curtis Thatcher and Eliza W. Thatcher, is untrue, evasive and insufficient.

Wherefore, it prays relief as in its said bill set forth.

PEYTON GORDON,

Special Assistant to the Attorney General, Solicitor for Complainant.

[Endorsed]: Filed Jan. 3, 1910. A. L. Richardson, Clerk. [157]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, THE CLEAR-
WATER TIMBER COMPANY et al.,

Defendants.

**Replication to Answer of Clearwater Timber
Company.**

REPLICATION TO ANSWER.

Replication of complainant in the above-entitled cause to the answer of the Clearwater Timber Company, defendant.

This replicant, saving and reserving to itself all advantage of exception, to the manifold insufficiencies, errors and uncertainties of the answer of the said defendant, the Clearwater Timber Company, for replication thereto says, that it will aver, maintain and prove its said bill of Complaint to be true and sufficient, and that the said answer of the said defendant, the Clearwater Timber Company is untrue, evasive and insufficient.

Wherefore, it prays relief as in said bill set forth.

PEYTON GORDON,

Special Assistant to the Attorney General, Solicitor
for Complainant.

[Endorsed]: Filed Jan. 3, 1910. A. L. Richardson, Clerk. [158]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, ELIZABETH
KETTENBACH et al.,

Defendants.

Replication to Answer of Elizabeth Kettenbach.

REPLICATION TO ANSWER.

Replication of complainant in the above-entitled cause to the answer of Elizabeth Kettenbach, defendant.

This replicant, saving and reserving to itself all advantage of exception to the manifold insufficiencies, errors and uncertainties of the answer of the said defendant, Elizabeth Kettenbach, for replication thereto says, that it will aver, maintain and prove its said bill of complaint to be true and sufficient, and that the said answer of the said defendant, Elizabeth Kettenbach, is untrue, evasive and insufficient.

Wherefore, it prays relief as in its bill set forth.

PEYTON GORDON,

Special Assistant to the Attorney General, Solicitor
for Complainant.

[Endorsed]: Filed Jan. 3, 1910. A. L. Richardson, Clerk. [159]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,
vs.

WILLIAM F. KETTENBACH, LEWISTON NATIONAL BANK et al.,
Defendants.

Replication to Answer of Lewiston National Bank.
REPLICATION TO ANSWER.

Replication of complainant in the above-entitled cause to the answer of the Lewiston National Bank, defendant.

This replicant, saving and reserving to itself all advantage of exception to the manifold insufficiencies, errors and uncertainties of the answer of the said defendant, the Lewiston National Bank, for replication thereto, says, that it will aver, maintain and prove its said bill of complaint to be true and sufficient, and that the said answer of the said defendant, the Lewiston National Bank is untrue, evasive and insufficient.

Wherefore, it prays relief as in its said bill set forth.

PEYTON GORDON,
Special Assistant to the Attorney General, Solicitor
for Complainant.

[Endorsed]: Filed Jan. 3, 1910. A. L. Richardson, Clerk. [160]

*In the District Court of the United States for the
Ninth Judicial Circuit and District of Idaho,
Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NATIONAL
BANK OF LEWISTON, IDAHO, THE
CLEARWATER TIMBER COMPANY,
THE WESTERN LAND COMPANY,
GEORGE E. THOMPSON, ELIZABETH
W. THATCHER, CURTIS THATCHER
ELIZABETH WHITE, EDNA P. KESTER,
ELIZABETH KETTENBACH, MARTHA
E. HALLETT, KITTIE E. DWYER, POT-
LATCH LUMBER COMPANY, ROBERT
O. WALDMAN,

Defendants.

Affidavit of Service [of Certain Answers].

AFFIDAVIT.

State of Idaho,
County of Nez Perce,—ss.

Raymond N. White, being first duly sworn, on oath
deposes and says:

That I *am at* all times herein mentioned have been a citizen of the United States and a resident of Lewiston, Nez Perce County, State of Idaho; that I am and at all times herein mentioned have been over eighteen (18) years of age and not a party to or interested in the above-entitled proceedings; that I am and at all times herein mentioned have been a clerk in the office of [161] James E. Babb, attorney of record for the defendants, Clearwater Timber Company, Potlatch Lumber Company, Idaho Trust Company and the Lewiston National Bank in the above-entitled cause; that the residence and post-office address of said James E. Babb is and at all times herein mentioned has been Lewiston, Nez Perce County, State of Idaho; that there is and at all times herein mentioned has been a United States postoffice at said Lewiston, Idaho; that the Honorable George W. Wickersham is and at all times herein mentioned has been Attorney General of the United States, and, as such, solicitor and of counsel for complainant in the above-entitled cause; that the postoffice address of said Attorney General is and at all times herein mentioned has been Washington, D. C.; that the Honorable Peyton Gordon is and at all times herein mentioned has been Special Assistant to the Attorney General of the United States, and, as such, solicitor and of counsel for the complainant in the above-entitled cause; that the postoffice address of said Peyton Gordon is and at all times herein mentioned has been Boise, Idaho; that the Honorable C. H. Lingenfelter is and at all times herein mentioned has been United States District Attorney for the District of

Idaho, and, as such, solicitor and of counsel for the complainant in the above-entitled cause; that the postoffice address of the said C. H. Lingenfelter is and at all times herein mentioned has been Boise, Idaho; that there is and at all times herein mentioned has been a United States postoffice at said Washington, D. C., and Boise, Idaho, and a regular communication by United States mail between each of said cities respectively and the city of Lewiston, Idaho, aforesaid; that on the sixth day of December, 1909, I placed a full, true and correct copy of the separate answers of Clearwater Timber Company and Potlatch Lumber Company to the bill of complaint in [162] the above-entitled cause, which answers had been theretofore filed in said cause on the day last aforesaid, in each of three separate envelopes, and sealed the same and addressed the same legibly as follows, respectively, to wit:

Hon. GEORGE W. WICKERSHAM,
U. S. Attorney General,
Washington, D. C.

Hon. PEYTON GORDON,
Special Asst. to Attorney General of U. S.,
Boise, Idaho.

Hon. C. H. LINGENFELTER,
U. S. District Attorney,
Boise, Idaho.

and stamped on each of said envelopes sufficient United States postage stamps to entitle the same to delivery by United States mail, and placed the same, on the day last aforesaid, so inclosed, sealed, ad-

dressed and stamped, in the United States postoffice at Lewiston, Idaho; and on the day last aforesaid I placed a full, true and correct copy of the separate answers of the Idaho Trust Company and the Lewiston National Bank to the bill of complaint in the above-entitled cause, which answers had been therefore filed in said cause on the day last aforesaid, in each of three separate envelopes and sealed the same and addressed the same legibly as follows respectively, to wit:

Hon. GEORGE W. WICKERSHAM,
U. S. Attorney General,
Washington, D. C.

Hon. PEYTON GORDON,
Special Asst. to Attorney General of U. S.
Boise, Idaho.

Hon. C. H. LINGENFELTER,
U. S. District Attorney,
Boise, Idaho.

and stamped on each of said envelopes sufficient United States postage stamps to entitle the same to delivery by United States mail, and placed the same, on the day last [163] aforesaid, so inclosed, sealed, addressed and stamped, in the United States post-office at Lewiston, Idaho.

RAYMOND N. WHITE.

Subscribed and sworn to before me this 10th day of December, 1909.

JOHN R. BEAKER,
Notary Public in and for Nez Perce County, State of
Idaho.

[Endorsed]: Filed January 4, 1910. A. L. Richardson, Clerk. [164]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

Memorandum Ruling on Exceptions and Demurrer.

DIETRICH, District Judge:

In harmony with the views expressed in the opinion filed November 30, 1909, in equity No. 388 and equity No. 407, in both of which the United States is the complainant and William F. Kettenbach and others are the defendants, an order will be entered allowing exceptions filed by William F. Kettenbach and others to paragraphs 2 and 5, and denying all other exceptions.

An order will also be entered overruling the demurrer. All the objections raised by the demurrer, excepting only that of multifariousness, are clearly ruled by the conclusion reached in the other cases. In some of its aspects the bill here is more obnoxious to the objection of multifariousness than was either of the other bills, but many of the defendants have answered without raising the objection, and if the averments of the bill are true, the rights of the several parties and their claims are so interlaced that I

have concluded to permit the suit to proceed in its present form, it not appearing that anybody will be materially prejudiced. On the whole, I am inclined to think that the burden upon [165] any defendant of making a defense in this suit will, to say the least, not be greater than such burden would be were the Government to institute a separate suit against such person.

Let orders be entered accordingly.

Dated this 7th day of January, 1910.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed Feb. 7, 1910. A. L. Richardson, Clerk. [166]

**[Order Allowing and Denying Certain Exceptions
and Overruling Demurrer to Complaint.]**

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

On this day was announced the decision of the Court upon the Exceptions and Demurrer filed by William F. Kettenbach et al. to the Bill of Complaint herein, which decision is in writing and on file herein, and is to the effect and it is ordered that the

said exceptions to paragraphs 2 and 5 of said complaint be allowed and denied as to all other exceptions. It is further ordered that said demurrer to the complaint herein be and the same is hereby overruled.

Dated February 7, 1910. [167]

Affidavit [of Service of Notice and Motion].

State of Idaho,

County of Ada,—ss.

Peyton Gordon, being first duly sworn, on oath says:

That he is counsel and solicitor for the complainant, the United States, in that certain cause named in the foregoing Notice and Motion; that on the 24 day of February, 1910, he served the foregoing Notice and Motion on George W. Tannahill, counsel and solicitor for certain defendants named therein, by handing to and leaving with said George W. Tannahill, personally, a true copy of said Notice and Motion, at Boise, Ada County, Idaho.

That he served said Notice and Motion on James E. Babb, counsel and solicitor for certain defendants therein named, by placing a true copy of said Notice and Motion in an envelope addressed to "James E. Babb, Esq., Attorney at Law, Lewiston National Bank Building, Lewiston, Idaho," the person to be served, said address being the place where the said James E. Babb has his offices, and that the postage was fully prepaid on said envelope, and that he, the said Peyton Gordon, deposited the same in

the United States postoffice at Boise, Idaho, on the 24 day of February, 1910, at 9 o'clock P. M., and that there is a regular mail communication between the said City of Boise, Idaho, and said City of Lewiston, Idaho:

That he served said Notice and Motion on Eugene A. Cox, Esq., counsel and solicitor for certain defendants therein named, by placing a true copy of said Notice and Motion in an envelope addressed to "Eugene A. Cox, Esq., Attorney at law, Lewiston National Bank Building, Lewiston, [168] Idaho," the person to be served, said address being the place where the said Eugene A. Cox has his offices, and that the postage was fully prepaid on said envelope, and that he, the said Peyton Gordon, deposited the same in the United States postoffice at Boise, Idaho, on the 24 day of February, 1910, at 9 o'clock P. M., and that there is a regular mail communication between the said city of Boise, Idaho, and said city of Lewiston, Idaho:

That he served said Notice and Motion on Morgan & Morgan, counsel and solicitors for certain defendants therein named, by placing a true copy of said Notice and Motion in an envelope addressed to "Morgan & Morgan, Attorneys at law, Moscow, Idaho," the persons to be served, said address being the place where the said Morgan & Morgan have their offices, and that the postage was fully prepaid on said envelope, and that he, the said Peyton Gordon, deposited the same in the United States postoffice at Boise, Idaho, on the 24 day of February,

1910, at 9 o'clock P. M., and that there is a regular mail communication between the said city of Boise, Idaho, and said city of Moscow, Idaho.

That the foregoing service includes counsel and solicitors for all parties who have appeared in said cause.

PEYTON GORDON.

Subscribed and sworn to before me this 24th day of February, 1910.

A. L. RICHARDSON,
Clerk of the United States Circuit Court.

[Endorsed]: Filed Feb. 24, 1910. A. L. Richardson, Clerk. [169]

*In the Circuit Court of the United States, Ninth
Judicial Circuit, District of Idaho, Northern
Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER,

ELIZABETH KETTENBACH, MARTHA
E. HALLETT, KITTIE E. DWYER, POT-
LATCH LUMBER COMPANY and ROB-
ERT O. WALDMAN,

Defendants.

**Notice of Motion [for Order to Amend Original
Bill].**

NOTICE OF MOTION.

To the Above-named Defendants and to Your Attor-
neys of Record, and to Each of You:

You are hereby notified that the undersigned so-
licitor for the complainant in the above-entitled
cause will, on the 7th day of March, 1910, at Boise
City, in the County of Ada, State of Idaho, at the
courtrooms of the Circuit Court of the United States
for the District of Idaho, in the Federal Building,
at the hour of 10:00 o'clock A. M., or as soon there-
after as the counsel can be heard, move the Court
for an order to amend the original Bill of Complaint
in the above-entitled cause, by interlineation, as set
forth in the motion attached to this notice, and here-
with served upon you. On the hearing of said mo-
tion, counsel will use this notice, the motion and all
the files and records in the above-entitled cause, or
so much thereof as may be necessary for the pur-
pose of [170] said motion.

Dated this 24th day of February, 1910.

PEYTON GORDON,

Special Asst. to Attorney General, Solicitor for
Complainant. [171]

*In the Circuit Court of the United States, Ninth
Judicial Circuit, District of Idaho, Northern
Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-
TER, CLARENCE W. ROBNETT, WILL-
IAM DWYER, THE IDAHO TRUST COM-
PANY, THE LEWISTON NATIONAL
BANK OF LEWISTON, IDAHO, THE
CLEARWATER TIMBER COMPANY,
THE WESTERN LAND COMPANY,
GEORGE E. THOMPSON, ELIZABETH W.
THATCHER, CURTIS THATCHER, ELIZ-
ABETH WHITE, EDNA P. KESTER,
ELIZABETH KETTENBACH, MARTHA
E. HALLETT, KITTIE E. DWYER, POT-
LATCH LUMBER COMPANY and ROB-
ERT O. WALDMAN,

Defendants.

**Motion [for Order Permitting Amendment to
Original Bill].**

MOTION.

Comes now the United States of America, com-
plainant in the above-entitled cause, by Peyton
Gordon, Special Assistant to the Attorney General,
its solicitor, and by direction of George W. Wicker-
sham, Attorney General, moves the Court for an

order permitting an amendment to the original Bill of Complaint, by interlineation, as follows, after the words, "The said complainant respectfully represents to this Court," fourth line from the bottom of page 1 of the Bill of Complaint, the following, to wit:

1-A. That at the time of filing this Bill of Complaint, the defendants William F. Kettenbach, Clarence W. Robnett, William Dwyer, George E. Thompson, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Elizabeth Kettenbach, Martha E. Hallett and Kittie E. Dwyer were, and now are, citizens of the United States and residents of the State and District of Idaho, residing in the County [172] of Nez Perce, State and District aforesaid.

That the defendant George H. Kester was, and now is, a citizen of the United States and resident of the State of Idaho, residing at Spirit Lake in said State of Idaho.

That the defendant Edna P. Kester was, and now is, a citizen of the United States and resident of the State of Washington at the city of Spokane, said State.

That the defendant Robert O. Waldman is a citizen of the United States, residing at Fresno, State of California.

That the defendant, the Lewiston National Bank of Lewiston, Idaho, is a corporation organized and existing under the national banking laws of the United States, with its principal place of business at Lewiston, County of Nez Perce, State of Idaho.

That the defendant, the Idaho Trust Company, is

a corporation organized and existing under the laws of the State of Idaho, with its principal place of business in said State at Lewiston, County of Nez Perce, State of Idaho.

That the defendant, the Clearwater Timber Company, is a corporation organized and existing under the laws of the State of Washington, and doing and conducting business within the State of Idaho, with its principal place of business in said State at Lewiston, County of Nez Perce, State of Idaho, and having a designated agent at said principal place of business, said designated agent, as aforesaid, being one James E. Babb.

That the defendant, the Western Land Company, is a corporation organized and existing under the laws of the State of Minnesota, and doing and conducting business within the State of Idaho, with its principal place of business in said State at Moscow, Latah County, Idaho, and [173] having a designated agent in said city, to wit, one William Morgan.

That the defendant, the Potlatch Lumber Company, is a corporation organized and existing under the laws of the State of Maine, and doing and conducting business within the State of Idaho, and having its principal place of business in said State at Potlatch, Latah County, Idaho, and having a designated agent at said place in said State, to wit, Allison W. Laird.

The complainant further prays for an order allowing the amendment of the original Bill of Complaint in the above-entitled cause, by interlineation as follows:

By inserting, on page 48 of said Bill of Complaint, between the conclusion of the allegations and the signature of George W. Wickersham, the following words:

“May it please your Honors to grant unto the complainant a Writ of Subpoena, issued out of and under the seal of this Honorable Court, directed to the said defendants, William F. Kettenbach, George H. Kester, Clarence W. Robnett, William Dwyer, the Idaho Trust Company, the Lewiston National Bank of Lewiston, Idaho, the Clearwater Timber Company, the Western Land Company, George E. Thompson, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, Kittie E. Dwyer, Potlatch Lumber Company and Robert O. Waldman, commanding them, by a day certain, and under a certain penalty therein to be inserted, to be and appear before this Honorable Court, and then and there to answer the premises; and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orator will ever pray.” [174]

PEYTON GORDON,

Special Asst. to Atty. General, Solicitor for Complainant.

[Endorsed]: Filed Feb. 24, 1910. A. L. Richardson, Clerk. [175]

*In the Circuit Court' of the United States, Ninth
Judicial Circuit for the District of Idaho, North-
ern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

Affidavit [in Support of Motion to Amend Bill].

AFFIDAVIT.

State of Idaho,

County of Ada,—ss.

Peyton Gordon, being first duly sworn, on oath deposes and says: That he is a Special Assistant to the Attorney General of the United States and is solicitor for the complainant in the above-entitled cause, and that he makes this affidavit for and on behalf of the complainant, the United States; that the said complainant being desirous of amending its bill of complaint in the said cause and having filed and served its notice and motion of such amendments, according to the rules of this Court, further says: That said motion and said proposed amendments are not made for the purpose of vexation or delay and that the matter contained in said proposed amendments is material and could not with reasonable diligence have been sooner introduced into the said bill.

PEYTON GORDON.

Subscribed and sworn to before me this 8th day of March, A. D. 1910.

A. L. RICHARDSON,
Clerk U. S. Circuit Court.

[Endorsed]: Filed March 8, 1910. A. L. Richardson, Clerk. [176]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH et al.,
Defendants.

**Order [Allowing Plaintiff to File Amendments to
Complaint].**

On this day this cause came on to be heard upon the plaintiff's motion for leave to amend the complaint herein, and it appearing to the Court that due notice was given and served upon counsel for defendants and no appearance having been made nor objections filed on that behalf, upon motion of Peyton Gordon, Assistant to the Attorney General, it is ordered that said plaintiff be, and is hereby, given leave to file amendments to said complaint.

Dated March 8, 1910.

Journal No. 3, p. 352. [177]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KITTIE E. DWYER, POTLATCH LUMBER COMPANY, ROBERT O. WALDMAN,

Defendants.

Amendments to [Bill of Complaint].

AMENDMENTS TO BILL IN EQUITY.

To the Honorable Judges of the Circuit Court of the
United States for the District of Idaho:

Now comes the United States of America, the complainant in the above-entitled cause, by George W. Wickersham, the Attorney General of the United States of America, by leave of the Court in that behalf first had and obtained, and makes and files this

the said complainant's Amendments to its Bill of Complaint, in the said cause as follows:

1st. After the words, "The said Complainant respectfully represents to this Court," fourth line from the bottom of page 1 of said Bill of Complaint, insert the following: [178]

1-A. That at the time of filing this Bill of Complaint, the defendants William F. Kettenbach, Clarence W. Robnett, William Dwyer, George W. Thompson, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Elizabeth Kettenbach, Martha E. Hallett and Kittie E. Dwyer were, and now are, citizens of the United States and residents of the State and District of Idaho, residing in the County of Nez Perce, State and District aforesaid.

That the defendants George H. Kester was, and now is, a citizen of the United States and resident of the State of Idaho, residing at Spirit Lake in said State of Idaho.

That the defendant Edna P. Kester was, and now is, a citizen of the United States and resident of the State of Washington at the city of Spokane, said State.

That the defendant Robert C. Waldman is a citizen of the United States, residing at Fresno, State of California.

That the defendant, the Lewiston National Bank of Lewiston, Idaho, is a corporation organized and existing under the national banking laws of the United States, with its principal place of business at Lewiston, County of Nez Perce, State of Idaho.

That the defendant, the Idaho Trust Company, is

a corporation organized and existing under the laws of the State of Idaho, with its principal place of business in said State at Lewiston, County of Nez Perce, State of Idaho.

That the defendant, the Clearwater Timber Company, is a corporation organized and existing under the laws of the State of Washington, and doing and conducting business within the State of Idaho, with its principal [179] place of business in said State at Lewiston, County of Nez Perce, State of Idaho, and having a designated agent at said principal place of business, said designated agent, as aforesaid, being one James E. Babb.

That the defendant, the Western Land Company, is a corporation organized and existing under the laws of the State of Minnesota, and doing and conducting business within the State of Idaho, with its principal place of business in said State of Moscow, Latah County, Idaho, and having a designated agent in said city, to wit, one William Morgan.

That the defendant, the Potlatch Lumber Company, is a corporation organized and existing under the laws of the State of Maine, and doing and conducting business within the State of Idaho, and having its principal place of business in said State at Potlatch, Latah County, Idaho, and having a designated agent at said place in said State, to wit: Allison W. Laird.

2d. By inserting on page 48 of said Bill of Complaint, between the conclusion of the allegations and the signature of George W. Wickersham, the following words:

“May it please your Honors to grant unto the complainant a Writ of Subpoena, issued out of and under the seal of this Honorable Court, directed to the said defendants, William F. Kettenbach, George H. Kester, Clarence W. Robnett, William Dwyer, the Idaho Trust Company, the Lewiston National Bank of Lewiston, Idaho, the Clearwater Timber Company, the Western Land Company, George E. Thompson, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, Kittie E. Dwyer, Potlatch Lumber [180] Company and Robert O. Waldman, commanding them, by a day certain, and under a certain penalty therein to be inserted, to be and appear before this Honorable Court, and then and there to answer the premises; and further, to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orator will ever pray.”

GEORGE W. WICKERSHAM,

Attorney General of the United States,

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitors for Complainant.

[Endorsed]: Filed March 8th, 1910. A. L. Richardson, Clerk. [181]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

W. F. KETTENBACH et al.,
Defendants.

Praeipce for Subpoena Ad Respondendum.

PRAECIPE.

A. L. Richardson, Clerk of the Circuit Court of the
United States:

Sir: You will please issue subpoenas ad respondendum in the above-entitled cause, together with certified copies of amendments to bill of complaint filed herein, by leave of the Court, upon Wm. F. Kettenbach, George H. Kester, William Dwyer, The Idaho Trust Company, The Lewiston National Bank of Lewiston, Idaho, The Clearwater Timber Company, The Western Land Company, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, Kittie E. Dwyer, Potlatch Lumber Company, and subpoenas ad respondendum and certified copies of the original bill of complaint and amendments thereto upon Clarence W. Robnett, Geo. E. Thompson, and Robert O. Waldman.

PEYTON GORDON,

Special Assistant to the Attorney General, Solicitor for Complainant.

[Endorsed]: Filed March 9, 1910. A. L. Richardson, Clerk. [182]

*In the Circuit Court of the United States, Ninth
Judicial Circuit, District of Idaho, Northern
Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK OF LEWISTON, IDAHO, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KITTIE E. DWYER, POTLATCH LUMBER COMPANY and ROBERT O. WALDMAN,

Defendants.

**Stipulation [That Bill may be Amended as Prayed,
and That Answers of Thatcher et al. Stand as
Answers to Bill as Amended].**

STIPULATION.

In the above-entitled cause complainant having moved for leave to amend its bill by interlineation,

and having noticed said motion for March 7th, 1910, at Boise City, in Ada County, Idaho, the said notice being dated February 24th, 1910, and served by mail upon the undersigned solicitor for the defendants hereinafter named.

NOW, THEREFORE, complainant and the defendants hereinafter named, by their respective solicitors agree: That complainant's bill may be amended as in the above-mentioned motion and notice specified and prayed for, and that all proper and necessary orders therefor may be made by the Court, and that the several answers of [183] defendants Eliza W. Thatcher, Curtis Thatcher and Elizabeth Kettenbach to complainant's bill heretofore filed shall stand and be considered as the answers of said defendants to the said bill as so amended.

Dated this 4th day of March, A. D. 1910.

PEYTON GORDON,

Special Asst. to Atty. General, Solicitor for Complainant.

EUGENE A. COX,

Solicitor for Eliza W. Thatcher, Curtis Thatcher and Elizabeth Kettenbach.

[Endorsed]: Filed March 9, 1910. A. L. Richardson, Clerk. [184]

*In the Circuit Court of the United States for the
Ninth Judicial Circuit and District of Idaho,
Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Stipulation [That Answers of Idaho Trust Co. et al.
Stand as Answers to Bill as Amended, and That
Replication Stand Accordingly].**

STIPULATION.

WHEREAS, complainant has, in March, 1910, procured leave to amend, and has amended, the Bill of Complaint in said cause, IT IS HEREBY STIPULATED, by and between the complainant and the defendants, Idaho Trust Company, Lewiston National Bank, Clearwater Timber Company and Potlatch Lumber Company, that the answers heretofore filed and served in said cause by said Idaho Trust Company, Lewiston National Bank, Clearwater Timber Company and Potlatch Lumber Company, shall stand as the answers of the said defendants, respectively, to the Bill of Complaint as amended.

IT IS ALSO STIPULATED that the replications filed by complainant heretofore, to the said answers

above mentioned, shall also stand as the replications to said answers.

Dated March 5, 1910.

PEYTON GORDON,
Special Assistant to the U. S. Attorney General,
Solicitor for Complainant.

JAMES E. BABB,
Solicitor and of Counsel for Defendants Idaho Trust
Company, Lewiston National Bank, Clearwater
Timber Company and Potlatch Lumber Com-
pany.

[Endorsed]: Filed March 11, 1910. A. L. Rich-
ardson, Clerk. [185]

*In the Circuit Court of the United States, Ninth
Judicial Circuit, District of Idaho, Northern Di-
vision.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NA-
TIONAL BANK OF LEWISTON, IDAHO,
THE WESTERN LAND COMPANY,
GEORGE E. THOMPSON, ELIZABETH
W. THATCHER, CURTIS THATCHER,
ELIZABETH WHITE, EDNA P. KESTER,

ELIZABETH KETTENBACH, MARTHA
E. HALLETT, KITTIE E. DWYER, POT-
LATCH LUMBER COMPANY and ROB-
ERT O. WALDMAN,

Defendants.

**Stipulation [That Replication to Answers of
Thatcher et al. be Treated as Though No
Amendments to Bill had Been Made, etc.].**

STIPULATION.

In the above-entitled cause, complainant and defendants Eliza W. Thatcher, Curtis Thatcher and Elizabeth Kettenbach, by their respective solicitors, agree:

That the replications of complainant, heretofore filed to the answers of defendants last named, shall be treated and considered as the replications to the said answers, with the same force and effect as if no amendments to complainant's bill had been sought or made, after the said replications were filed, but this stipulation shall not be considered as a waiver, by said defendants, of any other objections to the said replications.

Dated, this 12th day of March, A. D. 1910.

Solicitor for Complainant.

EUGENE A. COX,

Solicitor for Defendants Eliza W. Thatcher, Curtis
Thatcher and Elizabeth Kettenbach.

[Endorsed]: Filed March 12, 1910. A. L. Richardson, Clerk. [186]

[Joint and Several Answers of William F.
Kettenbach et al. to Bill in Equity.]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NA-
TIONAL BANK OF LEWISTON, IDAHO,
THE CLEARWATER TIMBER COM-
PANY, THE WESTERN LAND COM-
PANY, GEORGE E. THOMPSON, ELIZA-
BETH W. THATCHER, CURTIS
THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KET-
TENBACH, MARTHA E. HALLETT,
KITTIE E. DWYER, POTLATCH LUM-
BER COMPANY, ROBERT O. WALD-
MAN,

Defendants.

ANSWER TO BILL IN EQUITY.

To the Honorable the Judges of the Circuit Court
of the United States, for the District of Idaho:

The joint and several answers of the defendants,
William F. Kettenbach, George H. Kester, William
Dwyer, Elizabeth White, Edna P. Kester, Martha
E. Hallett and Kittie E. Dwyer, to the Bill in Equity

of the United States of America, complainant, respectfully show: [187]

That these defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill in equity contained, for answer thereto, or to so much or such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say:

1.

These answering defendants, and each thereof, deny that heretofore, to wit, on the first day of July, in the year 1902, or upon any other date, or at all, or at divers other times before or after that day, or before the making of the several entries in complainant's bill in equity mentioned or designated, in the State of Idaho, William F. Kettenbach, George H. Kester, Clarence W. Robnett or William Dwyer, who are in the caption of the complainant's bill in equity named as defendants, or who are among the defendants to this cause, did unlawfully or corruptly combine, conspire, confederate or agree together, or with each other, or with divers other persons, some of whom are in complainant's bill in equity named or others of whom are to the complainant unknown, or did form, make or enter into an unlawful, corrupt or fraudulent conspiracy, combination or agreement with each other or with the other persons aforesaid, for the purpose or to the end of defrauding the complainant of the title or ownership of divers large tracts of public land then owned by the complainant

or lying in the district of public lands subject to entry at the land office of the United States located at Lewiston, in the State of Idaho, or for the purpose or to the end of defrauding the complainant out of the use, occupation or possession of the said tracts of public land; or for the purpose or to the end of defrauding [188] the United States by acquiring from the United States, through or by means of the Act of Congress approved on June 3, 1878, or upon any other date, or at all, for themselves or for each of themselves, the title to large bodies of timber lands, then being public lands or the property of the United States, in area or to an amount much greater than the area of the amount which they, the said defendants, individually or collectively, could lawfully, or in accordance with the provisions of the said statute, acquire; or for the purpose or to the end of defrauding the United States by causing or procuring divers or many other persons severally to make entries of, or to purchase from the United States, under or in professed accordance with the provisions of the said statute, divers or many tracts of public lands, then being the property of the United States, they, the said defendants, then or there, intending or designing afterwards to acquire from the said other persons the said lands so to be entered or purchased by the said other persons, or intending or designing afterwards to acquire from the said other persons, or intending or designing to cause or procure the said lands to be entered or purchased in the interest or for the ultimate benefit or advantage of themselves, the said defendants, whereby, or in

or by which procurement, with the intent aforesaid, the provisions of the said statute should be abused or perverted or the true intent or purpose of the said statute should be defeated; or for the purpose of accomplishing the said ends or of defrauding the United States by divers fraudulent or unlawful means, that is to say, by means of false, fraudulent or unlawful entries to be made of the aforesaid tracts of public land at the land office aforesaid, or by means of perjury, the subornation of perjury, the procurement of false swearing, [189] or by means of other falsehoods, false pretenses or misrepresentations, whereby the officers of the United States should be deceived or imposed upon or should be induced or procured to divest the United States of its title to the said lands or to convey the said title of the United States to divers persons not lawfully entitled thereto contrary to the laws of the United States, or for the benefit, advantage or profit of the said defendants.

2.

These answering defendants, and each thereof, deny all of paragraph four of complainant's Bill in Equity, beginning with the word "that," the same being the first word in paragraph four, and ending with the word "made," the same being the last word in paragraph four, and these defendants especially deny that they ever at any time entered into any conspiracy, or as a part of said conspiracy, or agreement, or at all, for the purpose of fraudulently acquiring timber lands, that they mutually agreed together to persuade or employ any persons what-

ever to make entries of divers tracts of public lands, or at all, under the Act of Congress of June 3, 1878, as amended or approved August 4, 1892, or at any other time, or that they would cause any persons to take any steps or initiate any proceedings to that end or of acquiring title to said lands, or at all, and deny that these answering defendants, or either thereof, entered into any unlawful agreement, conspiracy or combination, for the purpose of acquiring title to any timber lands whatever, or at all.

3.

These answering defendants, and each thereof, deny all of paragraph six of complainant's Bill in Equity, beginning with the word "that," the same being the first word in paragraph six, and ending with the word "interrogatories," [190] the same being the last word in paragraph six, and these defendants, and each thereof, especially deny that as a further part of the said or any conspiracy, or agreement, entered into by the said defendants, or either thereof, or as a part of any unlawful purpose whatever, these defendants did mutually agree to procure any entrymen to make entry of any lands whatever, or after having procured other persons to make entry or application to enter any lands whatever, to furnish or advance to each or any thereof any money for the purpose of paying the necessary fee to the proper officers of the United States, or at all, or the amount prescribed by law to be paid upon the making entry by such or any persons for the purchase price of the said or any lands whatever or at all, or that these defendants, or either thereof, pursuant to any de-

sign, purpose or intention, did advance any money for the purpose of paying the purchase price of any lands whatever, or entered into any conspiracy, combination or agreement wherein or whereby any entryman should swear falsely to any interrogatories propounded to him, or should be guilty of wilful or corrupt false swearing, or should in any manner make any misrepresentations to the officers of the United States, or at all, and these defendants, and each thereof, deny each and every allegation contained in said paragraph six.

4.

Deny that thereafter, or that is to say, after the formation or making of the said or any unlawful conspiracy or agreement so as aforesaid made or entered into by the said defendant hereinbefore named, or either thereof, or at divers times in the State of Idaho, or in pursuance or execution of the said or any conspiracy, or for the purpose of effecting the said unlawful purpose [191] thereof, the said defendants, or some of them, did make or enter into fraudulent, corrupt or unlawful contracts, agreements, arrangements or understandings, with a large number of persons severally, or that is to say, with William B. Benton, Joel H. Benton, George W. Harrington, Van V. Robertson, John W. Killinger, John E. Nelson, Soren Hansen, James C. Evans, Pearl Washburn, Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Drury M. Gammon, Guy L. Wilson, Frances A. Justice, Edna P. Kester, Elizabeth Kettenbach, William J. White, Elizabeth White,

Mamie P. White, Martha E. Hallett, Daniel W. Greenburg, David S. Bingham, William McMillan, Hattie Rowland, William E. Helkenberg, William Haevernick, Alma Haevernick, Geary Van Artsdalen, Robert O. Waldman, Rowland A. Lambdin. Ivan R. Cornell or Fred W. Shaeffer, severally, or either thereof, or with divers other persons, who are to the complainant now unknown, or at all, or whose names when the same shall be discovered, the complainant prays leave to add to its bill by proper amendment, or to seek appropriate relief in respect of the lands by them fraudulently obtained from the complainant; or that in or by the said unlawful contracts, agreements, arrangements or understandings so as aforesaid made by the said defendants with the said other persons, each of the said other persons severally agreed or arranged with the said defendants or with some of them, that he or she would make an entry or purchase of a tract of the public land of the United States under or in pretended or apparent accordance with the aforesaid Act of Congress approved on June 3, 1878, as amended on August 4, 1892, or upon any other dates or at all, or would, upon obtaining title to the said tract from the United States, convey the said title or tract to the defendants, or to some of them, or, at the [192] direction or for the benefit of the said defendants, to some other person or to some firm or body corporate to be by the said defendants designated; or the said defendants, or some of them, acting for all, agreed, contracted or arranged that they would pay to each of the said other persons a certain sum of

money for the tract of land by him or her so to be entered or by way of recompense to such person for his or her costs, labor or trouble incurred in acquiring title to the said tract from the United States; or the said defendants further agreed or promised to furnish or advance to each of the said other persons so much money as might be necessary to enable him or her to pay for such land or to defray the other expenses incident to the obtaining of title to such lands from the United States, or at all.

5.

These answering defendants, and each thereof, deny all of paragraph eight, beginning with the word "that," the same being the first word of paragraph eight, and ending with the word "title," the same being the last word in said paragraph eight, except that these defendants, and each thereof, admit that the said several persons mentioned in paragraph eight made application for certain timber lands under the Timber and Stone Laws of the United States, and under the provisions of the Act of Congress, approved June 3, 1878, as amended by the Act of Congress, approved August 4, 1892, but deny that there was ever any agreement, understanding, combination, corrupt or fraudulent conspiracy, or any conspiracy whatever, or any agreement whatever, between the said several parties mentioned in paragraph eight of complainant's bill in equity, that the said parties should make entry of the tracts of land to which they acquired title under the Timber and Stone Laws [193] of the United States, and deny that each or any of said applications were made, or

each of said entries sought or intended to be made, in accordance with or in pursuance of any unlawful, corrupt or fraudulent agreement theretofore made, or at all.

6.

These answering defendants, and each thereof, deny each and every allegation contained in paragraph nine of complainant's bill in equity, and especially that portion thereof beginning with the word "and," the same being the first word in paragraph nine, and ending with the word "office," the same being the last word in said paragraph nine, except that these defendants admit that the said several parties mentioned in said paragraph nine did appear before the Register and Receiver, and the proper officers of the land office, and make their proof for the said several tracts of land, but deny that any of said parties appeared before the officers of the aforesaid land office pursuant to any corrupt, fraudulent or unlawful combination or agreement of any kind or nature, and deny that any such agreement ever existed between the defendants herein and the said several parties mentioned in paragraph nine, or either thereof, and deny that the said defendants, or either thereof, procured any of said parties to make any false or untrue statements in relation to his final proof, or to his application for the land, or any part thereof.

7.

These defendant's, and each thereof, deny each and every allegation contained in paragraph ten, and especially that portion thereof beginning with the word

“and,” the same being the first word in paragraph ten, and ending with the word “entered,” the same being the last word in said paragraph ten, and these defendants especially deny that any money whatever was furnished by these defendants [194] pursuant to any unlawful or fraudulent or mutual agreement between the said several entrymen, or either thereof, or that there was any understanding made or had with each or any of said persons that any money so furnished was by way of advancement upon the purchase price theretofore agreed to be paid to such person by the said defendants for the land to be entered or acquired by such person, or was to be applied by such person to the purchase of or the payment for the tract by him to be entered, or the said defendants then or there, or at all times thereafter, designing, intending, or expecting that each of the said persons so receiving such sums of money should or would, when he or she should be questioned upon the subject by the officers of the aforesaid land office, deny or conceal from the said officers the fact that he or she had received such money from the said defendants, or either thereof, or should or would, in answer to the interrogatories to be propounded by the said officers, falsely, or fraudulently state, on his or her oath, in writing, that he or she had obtained the said money from other persons or by other means, for the purpose or to the end that the said officers or the other officers of the United States concerned or charged with the administration of the laws governing the disposal of the public lands might or should thereby be deceived, imposed upon or fraudu-

lently misled, or so prevented from further inquiry, investigation or consideration concerning such entries, whereby the truth or the facts hereinbefore, or in complainant's Bill in Equity stated, might be discovered or the fraudulent character of the several transactions disclosed, or that the said officers might or should thereby be fraudulently or mistakenly caused to believe that such entries were lawful or honest, or so to be induced to approve the said [195] entries or to cause patents to be issued thereon, conveying to the several said persons the tracts by them respectively entered, and deny that any false, fraudulent or unlawful agreement, combination, conspiracy or understanding was ever had or entered into by either of these answering defendants, or the several entrymen, or either thereof.

8.

These answering defendants, and each thereof, deny all of paragraph eleven, beginning with the word "that," the same being the first word in paragraph eleven and ending with the word "United States," the same being the last word in paragraph eleven, and these defendants, and each thereof, especially deny that pursuant to the said or any unlawful or corrupt conspiracy, combination, confederation or agreement, or in furtherance thereof, or to carry out or effect the object or purpose thereof, the said defendants, or either thereof, procured the said several persons to make any statement whatever concerning their said entry, or for the purpose of imposing upon the officers, or to make false or any statements concerning their said entry, or the

purpose for which it was being made, or for any purpose whatever or at all, or for the purpose of misleading the officers of the United States, or either thereof.

9.

Answering paragraph twelve of complainant's Bill in Equity, these defendants deny that at the divers or several times hereinbefore, or in complainant's Bill in Equity referred to, the said William B. Benton, or the other persons hereinbefore or in complainant's Bill in Equity named or stated to have made or entered into certain unlawful, corrupt or illegal agreement, arrangements or understandings with the said defendants hereinbefore or [196] in complainant's Bill in Equity named, severally did apply to enter, or did make entries of divers tracts of public lands of the United States subject to disposal at the aforesaid land office, or each of the said persons did consequently or in the usual course of administration of the public laws, obtain from the United States a patent whereby the United States conveyed to each of the said persons, severally, the tracts by him or her entered, but admit that the said several persons in good faith and in the usual course of administration of the public laws, did obtain from the United States a patent whereby the United States conveyed to each of the said persons severally the tracts by him or her entered, as alleged in paragraph twelve of complainant's Bill in Equity, beginning with the words "William B. Benton," the same being the first word in line thirteen from the top of page 20, and ending with the word "aforesaid,"

the said being the last word in said paragraph twelve.

10.

These defendants, and each thereof, deny that each of the said persons so making entry of or obtaining title to the tract by him or her entered, did apply to make or did make such entry, or did prosecute or carry on the proceedings, at the solicitation or instigation of the said defendants, or either thereof, being moved and stimulated thereto by the advice, request or promises of the said defendants hereinbefore or in complainant's Bill in Equity named, or at all, or therein acting upon, in pursuance of, or in accordance with the unlawful, corrupt, or fraudulent agreement, arrangement or understanding theretofore made or entered into as aforesaid between him or her or the said defendants, which said agreement, arrangement or understanding theretofore made or entered into as aforesaid between [197] him or her or the said defendants, which said agreement, arrangement or understanding continued or subsisted throughout the whole of the said proceedings, whereby it had been or was agreed that the said defendants should buy from each of the said persons, or each of the said persons should sell or convey to the said defendants, or, at the direction or for the benefit of the said defendants, to some other person or to some firm or body corporate to be by the said defendants designated, the tract or the title by him or her to be acquired from the United States.

11.

These defendants, and each thereof severally deny that each of the persons mentioned in paragraph

thirteen of complainant's Bill in Equity, or stated to have made entries, severally, of certain tracts of public land, in connection with his or her application to make entry of such land, or as a part of the said application, or as a necessary or material step in the proceedings to obtain a patent for the land by him or her sought to be entered, did file in the said land office a written statement, of the character, substance, tenor or purport prescribed by the Act of Congress aforesaid, wherein such person did, on his or her oath, falsely, fraudulently or deceitfully swear in substance that he or she was not applying to purchase the tract of land by him or her sought to be entered on speculation, but in good faith to appropriate the same to his or her own exclusive use or benefit, or that he or she had not directly or indirectly made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she should acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself or herself, whereas in truth or in fact each [198] of the said persons was applying to enter the tract by him or her sought to be entered upon speculation, or not for his or her own exclusive use or benefit, or had made an unlawful or fraudulent agreement with the said defendants hereinbefore or in complainant's Bill in Equity named, as aforesaid, whereby the title by him or her to be acquired should inure to the use or benefit of the said defendants, or, at the direction or for the benefit of the said defendants, to some other person or to some firm or body corporate to be by the said

defendants designated; or the said statements so made by the said persons or each of them were known by the said persons or by each of them, or were known by the said defendants, to be false, untrue, fraudulent or deceitful.

12.

These defendants and each thereof deny all of paragraph fifteen, beginning with the word "and," the same being the first word in said paragraph fifteen, and ending with the word "fraudulent," the same being the last word in said paragraph fifteen.

13.

These defendants, and each thereof, deny all of paragraph sixteen, beginning with the word "and," the same being the first word in the first line of paragraph sixteen, and ending with the word "prevented," the same being the last word in said paragraph sixteen.

14.

Answering paragraph seventeen of complainant's Bill in Equity, these defendants, and each thereof, deny that by reason of the unlawful or any conspiracy among the said defendants, hereinbefore or in complainant's Bill in Equity named, or either thereof, the unlawful agreements between the said defendants or the said other persons [199] who made the entries herein, or in complainant's Bill in Equity, enumerated or designated, the perjury procured by the said defendants or committed by the said other persons in the procurement of the said entries, or the false swearing, misrepresentations or concealment of material facts committed or practiced by the

said persons, or of the other matters which are hereinbefore or in complainant's Bill in Equity set out, the said entries, or each of them, were unlawfully made, or were or are illegal, fraudulent or invalid, or that the United States was or is defrauded thereby; or that, by reason of the said facts, the officers of the United States, charged with the administration of the laws providing for or governing the disposal of the public lands, or concerned in the transactions herein stated, were deceived, defrauded, misled or imposed upon, or caused to allow the said entries to be made, or induced to approve the said entries or to issue patents thereon; or that the said patents, by reason of the said facts, are invalid, or are voidable at the suit of the United States, as having been procured by fraud, perjury, misrepresentation or imposition or in violation of law, or as having been issued or granted under fraudulent imposition or mistake of fact, or in fraud of the United States.

15.

Answering paragraph eighteen, these answering defendants, and each thereof, deny each and all of paragraph eighteen, beginning with the word "and," the same being the first word in paragraph eighteen, and ending with the word "held," the same being the last word in paragraph eighteen, and these defendants especially deny that any patents to the lands described in complainant's bill in equity, or either thereof, were procured, as the defendants, William [200] F. Kettenbach, George H. Kester, William Dwyer, or Clarence W. Robnett, or either thereof, well knew at the time of procuring the same, in viola-

tion of the laws of the United States, and also deny that each and every tract of land, or either thereof, or the acts or conduct of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, or Clarence W. Robnett, or either thereof, or each or every of their employers or confederates, were illegal or fraudulent, or that the patents procured from the complainant by or on behalf of said defendants were or are, in each or every instance, fraudulent, invalid or voidable as against the complainant, or contrary to equity or good conscience, or being so, or the titles purporting to be conveyed thereby being vested in certain of the said defendants, the said patents ought to be vacated, set aside, avoided or for naught held, and deny that either or any of said patents should be vacated or set aside.

16.

Answering paragraph nineteen, these defendants, and each thereof, deny that the patents were so unlawfully or fraudulently procured from complainant by or on behalf of the defendants, William F. Kettenbach, George H. Kester, William Dwyer or Clarence W. Robnett, for the several tracts of land in the bill of complaint mentioned or described, and deny that the said patents were issued at the instance or request of either of the said defendants, or pursuant to any agreement, combination or understanding, but admit that the said patents were issued within six years of the filing of complainant's bill in equity.

17.

Answering paragraph twenty, these defendants, and each thereof, deny all of said paragraph twenty,

beginning with the word "the," the same being the first word in line One in paragraph twenty, and ending with the word "Transferees," [201] the same being the last word in said paragraph twenty, and these defendants, and each thereof especially deny that the said several entymen made their entries pursuant to the said or any unlawful conspiracy, agreement or arrangement whatever, theretofore formed or then or *then* existing among themselves, or at all, or that the said titles were held by the said defendants or any bodies corporate, or at all, pursuant to any agreement, understanding, combination or confederation of any kind or nature, and these defendants deny that any of the said titles are held by any persons or bodies corporate pursuant to any combination, confederation, understanding or agreement of any kind or nature, but admit that these defendants in good faith purchased the said tracts of land, and allege that the said tracts of land were long prior to the commencement of this action, sold and transferred to other persons in the due course of business and for a valuable consideration; and these defendants and each thereof, deny that they now own or have any interest in any of said lands whatever, or at all, except an equity of redemption in and to the lands filed upon by the following-named persons, referred to, set out and described in paragraph twelve of complainant's Bill in Equity, to wit:

James C. Evans, Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Guy L. Wilson, Daniel W. Greenburg, David S. Bingham and William E. Hel-

kenberg, which tracts of land were acquired by the defendants George H. Kester and William F. Kettenbach, and conveyed to Idaho Trust Company to be held as security for the payment of certain sums of money advanced to the said William F. Kettenbach and George H. Kester, which advancement was made at the time the said security was given, and these defendants [202] admit that the tracts of land acquired by Frances A. Justice, William McMillan and Hattie Rowland were purchased by Kittie E. Dwyer, but deny that the defendants William F. Kettenbach or George H. Kester, or any of the defendants, except the defendant Kittie Dwyer, have any interest therein of any kind or nature, and deny that they ever had any interest in said tracts. These defendants allege that the purchases were made in good faith without any confederation, combination, agreement or understanding of any kind or nature, and these defendants, and each thereof, severally deny that the said land or any part thereof was acquired pursuant to any agreement between the said defendants, or either thereof, or for the use or benefit of the said defendants, William F. Kettenbach, George H. Kester or William Dwyer, or either thereof.

18.

Answering paragraph twenty-one, these defendants, and each thereof, deny all of said paragraph twenty-one, beginning with the word "and" the same being the first word in line one of paragraph twenty-one and ending with the word "hereof," the same being the last word in said paragraph twenty-one, and these defendants especially deny that in each or

either of the cases, or the transactions mentioned, designated, alleged or set out in complainant's bill in equity the entry was made corruptly, unlawfully or in fraud of the United States, or in pursuance of or in accordance with the unlawful, corrupt or fraudulent contract, agreements, or arrangements hereinbefore or in complainant's bill in equity stated or alleged as having been made or as existing between the several persons so severally making entries or the said defendants hereinbefore named, or either thereof, and deny that any of said entries were made pursuant to any agreement or understanding with the said defendants, or either thereof.

181½.

Answering paragraph twenty-two of complainant's [203] Bill in Equity, these defendants, and each thereof, deny that the said tracts of land in each or every instance have been respectively conveyed as in the said paragraphs alleged, or the several persons or bodies corporate by whom or by which the said lands or the titles thereto are now held, conveyances or other transactions in the said paragraphs alleged, described, or charged to be fraudulent in the manner or in the respects therein set out, being named or stated in said paragraph twenty-two as the said James C. Evans, Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Guy L. Wilson, Daniel W. Greenburg, David S. Bingham or William E. Helkenberg, having, as aforesaid, made entries severally of divers several tracts of public land, which tracts are in complainant's Bill in Equity severally described in con-

nection with the names of the said persons respectively making entries thereof, did thereafter severally convey the said tracts or such titles as were so by them, respectively, acquired, to the defendants hereinbefore named, but admit that the said conveyances were made to William F. Kettenbach and George H. Kester, and admit that the said Kettenbach and Kester, by their several deeds of conveyance, in which they were joined by their respective wives, did convey the several tracts of land to the defendant, Idaho Trust Company, a body corporate organized or existing under or by virtue of the laws of the State of Idaho, by which said body corporate the said lands or the titles thereto are now held, but deny that the said conveyances were absolute conveyances and allege the truth to be that the conveyances were made as security to secure the payment of certain sums of money advanced and borrowed from the Idaho Trust Company by the [204] defendants Kester and Kettenbach, and deny that the said corporate defendant took the said titles without the payment of any valuable or other consideration therefor, or with notice or knowledge of the invalidity, as aforesaid, of the said titles, or holds the same in trust for or to the use of the said defendants conveying the same.

Admit that the said William McMillan and the said Hattie Rowland, named in paragraph twenty-two of complainant's Bill in Equity, made entries of tracts of public land, and did thereafter severally convey the said tracts by them respectively entered, and the titles by them respectively so obtained, to the defendant Kittie E. Dwyer, and that the said Kittie E.

Dwyer did afterwards, by several deeds of conveyance, convey the said tracts to the defendant Idaho Trust Company, and that each of said conveyances so made by the said Kittie E. Dwyer was subject to a mortgage previously made and given by the said Kittie E. Dwyer to the defendant, The Lewiston National Bank, but deny that the said Idaho Trust Company took the said titles without the payment of any valuable or other consideration therefor, or with notice or full knowledge of the invalidity, as aforesaid, of the said titles, or holds the same in trust for or to the use of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett, or either thereof, or some of them.

Admit that the said Van V. Robertson, made entry of a tract of public land, as alleged in paragraph twenty-two of complainant's Bill in Equity, and that he did thereafter convey the said tract and the title by him so acquired to the defendant. The Lewiston National Bank, of Lewiston, in the State of Idaho, a body corporate, organized and existing under and in virtue of the laws of the United States [205] relative to national banks, and admit the said Drury M. Gammon did convey the land described and alleged in complainant's bill in equity to have been by him entered, to the defendant, Clarence W. Robnett, and admit that the said Robnett did thereafter convey the said tract to the said defendant, The Lewiston National Bank, by which body corporate the titles alleged to have been conveyed to it are now held, but deny that the said defendant bank took the said titles without the payment of any consideration therefor,

or with notice or knowledge of the invalidity, as alleged in complainant's bill in equity, of the said titles, and deny that the Lewiston National Bank holds the same in trust for or to the use of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer or Clarence W. Robnett, or some of them or either thereof.

Admit that the said William B. Benton and the said Joel H. Benton have severally made entries of certain described tracts of public land, and did thereafter severally convey the said tracts to the said defendant, Clarence W. Robnett, and admit that the said Clarence W. Robnett did thereafter convey the said tracts to the defendant Elizabeth White, and admit that the said Elizabeth White did thereafter convey the said tracts to the defendant Clearwater Timber Company, a body corporate, organized and existing under and by virtue of the laws of the State of Washington, and admit that the said Pearl Washburn made entry of a certain described tract of public land, as alleged in complainant's bill in equity, and did thereafter convey the said tract to James B. McGrane, by whom the same was thereafter conveyed to one John E. Chapman, who thereafter conveyed the same to the defendant Clearwater Timber Company; and admit the said William [206] Haevernick made entry of a certain described tract of public land, and thereafter conveyed the said tract to one Frank W. Kettenbach, and the said Frank W. Kettenbach did thereafter convey the same to the said defendant, the Clearwater Timber Company; and admit that the said Alma Haevernick made entry of a

certain described tract of public land, and did thereafter convey the said tract to the said Frank W. Kettenbach, and the said Frank W. Kettenbach did thereafter convey the same to the said defendant, the Clearwater Timber Company; and admit the said Geary Van Artsdalen made entry of a certain described tract of public land, and did thereafter convey the same to the said defendant, The Clearwater Timber Company, and admit the said Clearwater Timber Company still holds the title to the said several tracts.

Admit that George W. Harrington made entry of a certain described tract of public land, as alleged in complainant's bill in equity, and did thereafter convey the same to one Bertha M. Turrish, by whom the said tract was conveyed to the Western Land Company, a body corporate organized and existing under the laws of the State of Minnesota; and admit the said John W. Killinger made entry of a certain described tract of public land, and did thereafter convey the same to the defendant George E. Thompson, and admit the said John E. Nelson made entry of a certain tract of public land, as alleged in complainant's bill in equity, and did thereafter convey the same to Elizabeth W. Thatcher, subject to a mortgage previously by the said Nelson made to the defendant, Curtis Thatcher, which mortgage appears on the land record of Nez Perce County, wherein the land is situate, and has not been released, and admit that the said Soren Hansen made entry of a certain described tract of public [207] land, as alleged in complainant's bill in equity, and deny that he, the

said Soren Hansen, did thereafter convey the same to the defendant, William F. Kettenbach, subject to a mortgage previously by the said Soren Hansen made to the defendant Curtis Thatcher, which mortgage appears on the land records of Nez Perce County, wherein the said land is situate, and that the same has not been released. Admit that the said William J. White and the said Mamie P. White made entries of certain described tracts of public land, as alleged in complainant's bill in equity, and thereafter severally conveyed the said tracts by them respectively entered to the defendant, Elizabeth White, but deny that the defendant, Clearwater Timber Company, at the time it acquired title to the lands in complainant's bill in equity alleged to have been conveyed to or still held by said body corporate, received said titles to the said lands with the full knowledge, notice, information or advice of or concerning the facts in complainant's bill in equity alleged, or well knowing that the said entries or the titles issued thereupon were unlawful, corrupt, fraudulent, invalid or voidable at the suit of the United States; or the lands or the titles thereto alleged in complainant's bill in equity to have been conveyed respectively to the defendants, Western Land Company, George E. Thompson, Elizabeth W. Thatcher or Elizabeth White, are still held by said defendants respectively, or the said defendants last named respectively received or now hold the titles to said lands with the full knowledge, notice, information or advice of or concerning the facts alleged in complainant's bill in equity, or well knowing that the said entries or the titles issued thereupon were unlaw-

ful, corrupt, fraudulent, invalid or voidable at [208] suit of the United States; or the land or the title thereto, alleged in complainant's bill in equity to have been conveyed as aforesaid by the said Soren Hansen to the said William F. Kettenbach, and deny that the said land was ever by the said Soren Hansen conveyed to the defendant William F. Kettenbach; deny that the defendant William F. Kettenbach has any interest therein, and deny that the said land was entered by the said Soren Hansen in the, or any, unlawful, corrupt, or fraudulent manner, as alleged in complainant's bill in equity, or in respect of all of the lands set out in said bill, or in furtherance of the conspiracy charged in complainant's bill in equity, or the title to the said land thus entered by the said Soren Hansen is invalid, obtained in fraud of the law, or voidable at the suit of the United States, but admit that the said various transferees had notice and knowledge of the issuance of patents to the said lands.

Deny that the said Edna P. Kester, Elizabeth Kettenbach, Elizabeth White, or the said Martha E. Hallett, named in complainant's bill in equity and alleged severally to have made entries of certain described tracts of public land, hold the same in trust for the defendants William F. Kettenbach, George H. Kester, William Dwyer or Clarence W. Robnett, or either thereof, or in accordance with the unlawful agreements alleged in complainant's bill in equity as having been made in respect of the said entries, or that the titles have been secretly conveyed to other persons, likewise in accordance with the said unlaw-

ful agreement, and deny that the said defendants, Edna P. Kester, Elizabeth Kettenbach, Elizabeth White or Martha E. Hallett, or either thereof, have ever conveyed the said tracts of land to any person or [209] persons whomsoever, and deny that any other persons have or own any interest therein of any kind or nature. Admit that the said Ivan R. Cornell, Rowland A. Lambdin and Fred W. Shaeffer made entries of the several tracts of public land, as alleged in paragraph twenty-two of complainant's bill in equity, and that the said entrymen thereafter conveyed the said tracts of land to William F. Kettenbach and George H. Kester, and that the said Kettenbach and Kester, joined therein by their respective wives, did thereafter convey the said tracts of land to the Potlatch Lumber Company, a body corporate, organized and existing under and in virtue of the laws of the State of Maine, but deny that the said Potlatch Lumber Company, or the said William F. Kettenbach or George H. Kester, or either thereof, took the titles with full knowledge, notice, information or advice of or concerning the facts alleged in complainant's bill in equity, or well knowing that the said entries or the titles issued thereupon were unlawful, corrupt, fraudulent, invalid or voidable at the suit of the United States, except that the said transferees had notice and knowledge of the issuance of patents to the said tracts of land.

Admit that the said Robert O. Waldman made entry of a certain described tract of public land under the laws of the United States, but as to whether or not the said Robert O. Waldman has conveyed the

said tract of land, these answering defendants have no knowledge or information sufficient to form a belief; therefore deny said allegation and place their denial upon that ground, and deny that the said Robert O. Waldman holds the same in trust for the defendants, William F. Kettenbach, George H. Kester, Clarence W. Robnett, or William [210] Dwyer, or either thereof, or in accordance with the unlawful agreements alleged in complainant's bill in equity as having been made in respect of the said entry, or that the said title has been secretly conveyed to other persons likewise in accordance with the said unlawful agreement, or any agreement.

Admit that the said Frances A. Justice made entry of a certain tract of land under the laws of the United States and that the said Frances A. Justice thereafter conveyed the said tract of land to Kittie E. Dwyer, and admit that the said Kittie E. Dwyer still holds the legal title to the said land, save and except a conveyance of the same as security for a certain sum of money which she owes the Idaho Trust Company, and deny that the said Kittie E. Dwyer retains the title to said tract or holds the same in secret trust for the defendants, William F. Kettenbach, George H. Kester, Clarence W. Robnett or William Dwyer, or either thereof, or in accordance with the unlawful agreements alleged in complainant's bill in equity, or either thereof, or that the title has been secretly conveyed to other persons likewise in accordance with the said or any unlawful agreement; deny that the said Kittie E. Dwyer still holds the said title for the defendants or either thereof.

Deny that the complainant has been so as above, or at all, cheated or defrauded of its public lands and is remediless at or by the strict rules of the common law, or is only relievable in a court of equity wherein such matters are fully cognizable and relievable, or that the complainant is entitled to any relief at all. Deny that these defendants, or either thereof, should be held to pay to the Treasurer of complainant, all such or [211] any reasonable sums of money as it may have found necessary to lay out and expend in and about discovering and establishing the fraud, or any fraud, as alleged and pleaded in complainant's bill in equity, or set forth or charged therein, or that the complainant is entitled to any relief in the premises as may be conformable to equity or good conscience, or at all.

19.

As to all of the other allegations and averments of the said bill of complaint not hereinabove admitted or denied by these answering defendants, these defendants allege that they are strangers as to all of the same and have no knowledge, information or belief concerning the same sufficient to enable them to answer the same, or any part thereof, and therefore for want of such knowledge, information or belief, deny the same so as to leave, and they leave, the complainant to make such proof thereof as it shall be able to produce.

20.

That the patents for the land afterwards conveyed to these defendants, as set forth in complainant's bill in equity, were made and issued at the dates re-

spectively set forth in the said bill in equity, and thereupon and thereby the said patentees respectively acquired the possession and the right to possession of the lands said patents respectively described, and the said possession and right to possession was transferred to and taken by the respective grantees claiming under said patentees, respectively, as set forth in the said bill in equity, from time to time, and the same finally passed from the patentees respectively to these defendants at the time of the conveyances to these defendants, as [212] set forth in the said bill in equity.

21.

That the said conveyances to the defendant, Idaho Trust Company, set forth in said bill in equity, while absolute in terms, were made, in fact, in trust and for the purpose of securing the payment of money, the terms of such trusts and the provisions concerning securing the payment of money having been executed in writing between the defendant, Idaho Trust Company, and the grantors in the said deeds conveying property to the defendant, Idaho Trust Company, including the husbands and wives of such grantors; that in and by the terms of the said agreements defining said trusts and the liens which should exist to secure the payment of money as aforesaid, it was provided that there should be a lien upon the lands described in the said conveyances to the defendant, Idaho Trust Company, to secure the payment of all sums of money owing to the defendant, Idaho Trust Company, or to the Lewiston National Bank, a corporation, at the time of the execution of said deeds

respectively to the defendant, Idaho Trust Company, or at any time thereafter from the parties to the said deed or to the said instrument concerning trusts and liens thereunder, or any of them.

22.

That at the time of the execution of said conveyance from William F. Kettenbach and George H. Kester and their wives to the defendant, Idaho Trust Company, and the said agreement defining the trusts and liens under said conveyance, the defendant, Idaho Trust Company, advanced and loaned to the said George H. Kester as a part of the consideration for the said conveyance and on the [213] faith of the security to be afforded thereby, the sum of twenty thousand dollars, the same to be repaid with interest at the rate of eight per cent per annum, and at the time of the execution of said deed and the said other instrument concerning trusts and liens the said George H. Kester was owing to Idaho Trust Company the sum of five thousand dollars, and interest thereon at the rate of eight per cent per annum on account of a loan in the amount of five thousand dollars theretofore made to the said George H. Kester; that the said George H. Kester is still owing to Idaho Trust Company the said sum of twenty thousand dollars and the said sum of five thousand dollars, which indebtedness is now evidenced by a note of his to said Trust Company for the principal sum of twenty-five thousand dollars and interest, and no part of the principal sum of the said note has been paid, and the whole amount thereof, with interest, is due, owing and unpaid, and is secured by a lien upon the

land described in the deed to the said Trust Company.

23.

That at the date of the deed to Idaho Trust Company from Kester and Kettenbach described in the said bill in equity, and of the instrument defining the trusts and liens under said deed, said George H. Kester was indebted to the Lewiston National Bank in the principal sum of twenty thousand dollars and interest, and Naylor and Norlin were indebted to said bank at that time in the sum of \$30,806.42, and the said deed to Idaho Trust Company was made for the purpose, among other things, of securing the said indebtedness of George H. Kester to said bank in the sum of twenty thousand dollars and interest, [214] and also for the purpose of securing his guarantee to said bank of the payment of the said sum of \$30,806.42; that the said George H. Kester is still owing to the said bank the said sum of twenty thousand dollars and interest thereon, no part of the said principal sum having been paid, and is still owing to said bank on his guarantee of the said sum of \$30,806.42 the sum of \$8,000.00 and interest thereon, which amount is still due and unpaid to the said bank, on account of the said original indebtedness of \$30,806.42.

That the said George H. Kester also executed his note to Idaho Trust Company September 30, 1909, for \$10,511.87 and interest at eight per cent per annum due December 30, 1909, which represents money advanced at different times, and interest thereon, and all which indebtedness of George H. Kester is se-

cured by a lien upon the land described in said deed from Kester and Kettenbach to Idaho Trust Company.

24.

That since the execution of the said deed by said Kester and Kettenbach to the Idaho Trust Company and the agreement in connection with the same, concerning the trusts and liens under said deed, the said William F. Kettenbach borrowed from said Lewiston National Bank \$2,000.00 on the 26th day of December, 1908, and \$10,000.00 on March 9, 1909, for which he gave his notes respectively, and that the said William F. Kettenbach thereafter paid all but \$7,000.00 of the said two promissory notes, and the said \$7,000.00, together with interest due thereon, is secured by land described in said deed from Kester and Kettenbach to Idaho Trust Company.

25.

That William F. Kettenbach borrowed from the [215] Idaho Trust Company on the 13th day of October, 1909, the sum of \$4,579.00, for which he gave said company his note, and thereafter, on the 13th day of May, 1909, the said William F. Kettenbach gave to said Idaho Trust Company his note for the sum of \$16,109.25 on account of money then due and owing from him to said Idaho Trust Company, a portion of which said two promissory notes is paid, and thereafter renewed said notes, giving an additional note for the balance of the sum due, owing and unpaid thereon in the sum of \$9,000.00, which note was executed on the — day of February, A. D. 1910, bearing interest at the rate of 8% per annum

from date, and which said promissory note is also secured by the lien under said deed.

26.

That the conveyance from Kittie E. Dwyer and husband to Idaho Trust Company, described in the bill in equity, though absolute in terms, was made upon certain trusts and to secure indebtedness of said Kittie E. Dwyer and husband, or either of them, either then owing or thereafter at any time to become owing to Idaho Trust Company or Lewiston National Bank as defined in an instrument executed at the date of said deed between said Kittie E. Dwyer and husband and said Idaho Trust Company; that the said deed and said instrument last-mentioned bore date the 31st day of December, 1908, and on the date of said deed and said instrument said Kittie E. Dwyer and husband executed to the Lewiston National Bank their note for the sum of \$14,056.00, with interest at ten per cent per annum, evidencing indebtedness [216] of the said Kittie E. Dwyer and husband to said bank existing at the date of said deed and agreement, and the larger portion of which had existed since the 8th day of July, 1907, on which date the said Kittie E. Dwyer and husband executed a mortgage to said bank to secure notes to said bank payable to said bank aggregating the principal sum of \$12,100, which sum is included in the note above mentioned for the sum of \$14,056; that on the 13th day of October, 1909, the said Kittie E. Dwyer and husband executed and delivered to Idaho Trust Company their promissory note for the principal sum of \$15,000, with interest thereon at the rate of ten per cent per annum to secure money due and

owing said Trust Company on account of a loan thereof made to the makers of said note; that no part of the principal sum of said note has been paid, and the same, with interest accrued thereon, is owing to the said Idaho Trust Company and secured by a lien under said deed from said Kittie E. Dwyer and husband to said Trust Company. That said note for \$14,056.00 was assigned to said Idaho Trust Company and was renewed by and included in said note for \$15,000.00.

27.

On the same date also the said Kittie E. Dwyer and husband executed another note to said Idaho Trust Company for the principal sum of \$3450.00, and interest at the rate of ten per cent per annum to secure indebtedness in that amount consisting of a loan made to said Kittie E. Dwyer and husband; that no part of the principal sum of said last-mentioned note has been paid and the same, with interest accrued thereon, is owing to said Idaho Trust Company and secured by a lien under said deed. [217]

28.

That all of the transfers and conveyances to Idaho Trust Company hereinabove mentioned and all of the loans and advances made by it and by the said Lewiston National Bank, as hereinabove set forth, were made in the usual and ordinary course of business and in good faith, believing that the titles transferred as aforesaid were good and valid titles; that said deed of Kettenbach and Kester to Idaho Trust Company and said deeds from the various entrymen

to Kettenbach and Kester and to Kittie E. Dwyer, and the said mortgage from said Kittie E. Dwyer and husband to said bank and to said Idaho Trust Company, and said deed from Kittie E. Dwyer and husband to said Idaho Trust Company, were duly acknowledged by them and the acknowledgments thereof were duly certified thereon respectively, and they were duly filed for record in the Recorder's office of said Nez Perce County, Idaho, on the following dates respectively, to wit, July 10, 1907, July 10, 1907, and January 4, 1909.

29.

That all of the said titles originated in patents made by the United States under the Timber and Stone Act of June 3, 1878, prior to any of the transfers to these defendants, or either thereof, or the Idaho Trust Company, as aforesaid, and the full sum of \$2.50 per acre was paid to the United States by the entrymen at the time of making final proof pursuant to which said patents issued, and since the date of making said final proofs respectively all State and County and other taxes levied and assessed upon said lands have been paid by the patentees and those claiming under them respectively up to this time, and all of the entrymen were *bona fide* residents, citizens and inhabitants of the United States, [218] and each thereof possessed a right to acquire title under the Timber and Stone Laws of the United States to the respective tracts of land to which they acquired title and made their respective entries.

30.

That the said conveyances from William J. White

and Mamie P. White, his wife, and all other conveyances alleged to have been made to the said Elizabeth White, as pleaded in complainant's bill in equity, were made in the usual course of business, and the full consideration paid therefor, and the said deeds were properly acknowledged so as to entitle them to be recorded, and that each thereof was recorded in the office of the County Recorder of Nez Perce County, State of Idaho, and now remains of record thereat; and all of the conveyances made to Clearwater Timber Company, set out, alleged and pleaded in complainant's bill in equity, were made in good faith, in the usual course of business, and the said conveyances were properly acknowledged so as to entitle them to be recorded, and the same were recorded in the office of the County Recorder of the proper counties in which the land is situate, and now remain of record thereat; that the conveyances to Potlatch Lumber Company, set out, alleged and pleaded in complainant's bill in equity, were made in good faith and in the usual course of business, and the full consideration paid therefor, and the deeds were properly acknowledged so as to entitle them to be recorded, and the same were thereafter recorded in the office of the County Recorder of Latah County, and now remain of record thereat; that the conveyances to Western Land Company, set out, alleged and pleaded in complainant's bill in equity, were made in good faith and in the usual course [219] of business, and the full consideration paid therefor, and the deeds were properly acknowledged so as to entitle them to be recorded, and the same were there-

after recorded in the office of the County Recorder of the proper counties in which the lands are situate, and now remain of record thereat; and the conveyances made to Kittie E. Dwyer were made by the respective entrymen to the said Kittie E. Dwyer in good faith, and in the usual course of business and the full consideration paid therefor, and the said conveyances were properly acknowledged so as to entitle them to be recorded, and were thereafter recorded in the office of the County Recorder of Nez Perce County, State of Idaho, and now appear of record thereat; that the conveyances made at Lewiston National Bank were made in good faith, in the usual course of business, and the full consideration paid therefor, and the said conveyances were properly acknowledged so as to entitle them to be recorded, and were thereafter recorded in the office of the County Recorder of the respective counties in which the lands are situate, and now remain of record thereat.

That each and all of the conveyances from the several entrymen to these defendants, or either thereof, were made in good faith and in the usual course of business, and the full consideration paid therefor, and without any notice of fraud or collusion or misrepresentation or deceit on the part of the entrymen in relation to the said entries; that the instruments of conveyance were properly acknowledged so as to entitle them to be recorded, and were thereafter recorded in the office of the County Recorder of the respective counties in which the lands are situate, and now remain of record thereat. [220]

31.

That the defendant, Martha E. Hallett, acquired title to said lots 1 and 2, and the east half of the northwest quarter of section 19, in township 38, north of range 6, E. B. M., under the Timber and Stone Laws of the United States, made her application pursuant thereto, furnishing her proof, paid the purchase price, and was competent and qualified to make entry under the Timber and Stone Laws of the United States. Patent issued to her therefor, and she now holds the title to the said tract of land, has never conveyed the same or agreed to convey the same to any person whatever, and no other person has any interest in or to said tract of land, or any part thereof.

32.

That the defendant, Edna P. Kester, acquired title to said tract of land under the Timber and Stone Laws of the United States, filed her application therefor on the 25th day of April, 1904, made final proof on July 13, 1904, embracing and including the north half of the northeast quarter and the north half of the northwest quarter of section 14, township 38, north of range 5, E. B. M., and thereafter on the 31st day of December, 1904, patent was issued by the United States conveying to the said Edna P. Kester the said tract aforesaid, and the said defendant, Edna P. Kester now holds the legal title thereto, and each and every part thereof, and has not conveyed or agreed to convey any part or portion of said tract.

33.

That the defendant, Elizabeth White, made ap-

plication under the Timber and Stone Laws of the United States for the south half of the northwest quarter and the south half of the northeast quarter of section 23, [221] township 38, north of range 5, E. B. M., and made her final proof therefor on July 14, 1904, and thereafter patent was issued to the said Elizabeth White for the said tract of land on the 31st day of December, 1904, and the said Elizabeth White now holds the legal title to said tract of land, and has not conveyed or agreed to convey the said tract or any part thereof, or any interest therein, to any person whomsoever.

34.

And these defendants further answering, deny that the complainant is entitled to the relief or any part thereof in said bill in equity demanded, and pray the same advantage of this answer as if they had pleaded or demurred to said bill in equity, and pray to be hence dismissed with their reasonable costs and charges in this behalf must wrongfully sustained. [222]

SECOND.

For a further, separate and second defense, and for a plea in bar, these answering defendants, and especially the defendants William F. Kettenbach, George H. Kester and William Dwyer, allege:

1.

That each and all of the conveyances made by the various entrymen to the defendants herein have been conveyed by warranty deeds or by instruments in writing, by which their title to the said tracts of land was warranted, and the defendants conveying the same to

the various transferees are liable on their warranties in case the title fails, and by reason thereof, in addition to their equity of redemption in the lands held by Idaho Trust Company, the defendants herein have an interest in all of the land in controversy which has been conveyed by them by reason of their warranty contained in the deeds, and conveyances made, executed and placed of record, and delivered to the various purchasers.

2.

That heretofore, on the 13th day of July, A. D. 1905, in the United States District Court within and for the Central Division, District of Idaho, in the case of the United States of America, v. Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, a Grand Jury, then in session, returned an indictment against these defendants, William F. Kettenbach, George H. Kester and William Dwyer, charging conspiracy to defraud the United States, in violation of Section 5440, R. S. U. S., in which indictment, and in Count One thereof, the charges against these defendants are in substance, as follows: [223]

"That heretofore, to wit, on the 25th day of April, 1904, at the place aforesaid, Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, and other persons to the Grand Jurors unknown, did falsely, unlawfully and wickedly conspire, combine, confederate and agree together among themselves to defraud the United States of the title and possession of large tracts of land situated in the County of Sho-

shone, and State and District of Idaho, and of great value, of which the following described land is a part, viz.: All that tract or parcel of land described as follows, to wit: Lots One and Two and the East Half of the Northwest Quarter of Section Thirty, Township Thirty-eight, North of Range Six, East of Boise Meridian, in the County of Shoshone, and State and District of Idaho, by means of false, fraudulent, untrue and illegal entries of said lands under the laws of the United States, the said lands being then and there public lands of the United States open to entry and sale under said laws of the United States at the local land office of the United States at said City of Lewiston, in said State and District of Idaho. That according to and in pursuance of said conspiracy, combination, confederation and agreement among themselves had as aforesaid, and to effect the object of said conspiracy, the said Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, did, on said 25th day of April, 1904, at the City of Lewiston, in the County of Nez Perce, in the State and District of Idaho, and within the jurisdiction of this court, fraudulently, unlawfully and corruptly persuade and induce one Charles W. Taylor of said District then and there being, to take his corporal oath and be then and there sworn before one J. B. West, who was then and there the duly appointed, qualified and acting Register of the United States Land Office at said City of Lewiston, in said Lew-

iston Land District, and who was then and there an officer and person having due and competent authority to administer said oath and who did then and there administer said oath to the said Charles W. Taylor. That a certain written affidavit and statement by him, the said Charles W. Taylor, then and there made, sworn to and subscribed, was true, which said written affidavit and statement then and there subscribed and sworn to by him, the said Charles W. Taylor at the request and by the procurement of them, the said Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, as aforesaid, was then and there in a case in which a law of the United States authorized an oath to be administered and that said written affidavit and statement was then and there required of him, the said Charles W. Taylor, by law, and the rules and regulations of the Interior Department and the General Land Office of the United States, which said written affidavit and statement was then and there that certain written application to the Register of the [224] United States Land Office, at said city of Lewiston, duly made and filed by him, the said Charles W. Taylor, in the United States Land Office at said city of Lewiston, on the 25th day of April, 1904, whereby he, the said Charles W. Taylor, duly applied to the said Register of the said United States Land Office at said City of Lewiston, to enter and purchase under that certain Act of Congress approved June 3, 1878,

entitled, 'An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory,' amended by that certain Act of Congress approved August 4, 1893, entitled: 'An act to authorize the entry of lands chiefly valuable for building stone under the placer mining laws,' the land hereinbefore described, to wit: Lots One and Two and the East Half of the Northwest Quarter of Section Thirty, Township Thirty-eight North of Range Six, East of Boise Meridian, situate within the District of lands subject to entry and sale under the public land laws of the United States, at the said United States Land Office at Lewiston, Idaho, and which written affidavit and statement sworn to as aforesaid, he, the said Charles W. Taylor, and the said Jackson O'Keefe, William Dwyer, George H. Kester, and William F. Kettenbach, and each of them, did then and there know to be false, fraudulent and untrue.

* * * ."

Which indictment was and is numbered 605, and which indictment was then and there, on the said 13th day of July, 1905, duly and regularly filed in the above-entitled court and now remains of record therein, and which indictment contains Count One, involving the entry of Charles W. Taylor and the land hereinbefore described, and Count Two thereof contains the same allegations as appear in Count One and hereinbefore pleaded, involving the entry of Edgar H. Dammarell, embracing the northwest quarter of section 19, township 38, north of range 6, E. B. M.

Count Three thereof contains the same allegations as appear in Count One and involves the entry of Edgar J. Taylor, embracing lots 3 and 4, and the east half of the southwest quarter of section 18, township 38, north of range 6, E. B. M. The Fourth Count thereof involves the entry of Joseph H. Prentice and embraces lots 1 and 2 and the east half of the northwest quarter of section 18, township 38, north of range 6, E. B. M., and which [225] count contains the same allegations as are contained in Count One hereof.

3.

INDICTMENT NO. 607.

That heretofore, on the 13th day of July, A. D. 1905, in the District Court of the United States, within and for the Central Division of the District of Idaho, a Grand Jury duly sworn and empaneled, returned an indictment against the defendants, William Dwyer, George H. Kester and William F. Kettenbach, charging the said defendants with conspiracy to defraud the United States in violation of Section 5440, R. S. U. S., consisting of Counts One, Two and Three, which said indictment is No. 607, returned by the Grand Jury and filed by the clerk of the above-entitled court on the said 13th day of July, 1905, and now appears on file therein, and which indictment is there referred to and made a part hereof as fully as if here set out.

That in Count One of said indictment there appears substantially the same allegation as to conspiracy, fraud, perjury and subornation of perjury as appear in the first count of Indictment No. 605, hereinbefore pleaded, set out and referred to, with

the exception that the name of the entryman is Rowland A. Lambdin, and the land involved is described as southwest quarter of section 29, township 42 north of range 1, west of Boise meridian, with other land.

That in Count Two of said Indictment No. 607 there appears substantially the same allegation as in Count One of Indictment No. 605, except that the name of the entryman is Fred W. Shaeffer, and the land is described as the east half of the northwest quarter and the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter of section [226] twenty-seven, township 40 north of range 1, west of the Boise meridian, with other land.

That in Count Three of said Indictment No. 607 there appears substantially the same allegation as in Count One of Indictment No. 605, except that the name of the entryman is given as Ivan R. Cornell, and the land involved is described as lots 6 and 7 and the east half of the southwest quarter of section twenty-seven, township 40, north of range 1, west of Boise meridian, with other lands.

4.

INDICTMENT NO. 615.

That in the District Court of the United States, within and for the Northern Division, District of Idaho, on the 6th day of November, 1905, a Grand Jury, duly sworn and empaneled, returned an indictment against the defendants, William F. Kettenbach, George H. Kester and William Dwyer, charging these defendants with conspiracy to defraud the United States in violation of Section 5440, R. S. U.

S., which indictment is numbered 615, returned by the Grand Jury and filed by the Clerk of the above-entitled court, November 6, 1905, and now remains on file therein, which said indictment is here referred to and made a part hereof as fully as if here set out.

That said indictment contains five counts, the first thereof involving the entry of Edward M. Lewis, and in which count substantially the same allegations are made as in Count One of Indictment No. 605, with the exception that the name of the entryman is different and the land involved is described as the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 19, township 39, north of range 5, east of Boise meridian, with other land. [227]

That in Count Two of said Indictment appears substantially the same allegation as appears in Count One of Indictment No. 605, hereinbefore pleaded, except that the name of the entryman is given as Hiram F. Lewis, and the land involved is described as the northwest quarter of section 20, township 38, north of range 5, east of Boise meridian, with other land.

That in Count Three thereof substantially the same allegations are made as appear in Count One of Indictment No. 605, except that the name of the entryman is given as Charles Carey, and the land involved, with other land, is described as north half of northeast quarter, and the north half of the northwest quarter of section 15, township 38, north of range 6, east of Boise meridian.

That in Count Four thereof, substantially the same allegations appear as in Count One of Indict-

ment No. 605, except that the name of the entryman is given as Guy L. Wilson, and the land, with other lands, is described as lots 3 and 4, and the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter of section 19, township 39, north of range five, east of Boise meridian.

That in Count Five of said indictment appear substantially the same allegations as in Count One of Indictment No. 605, with the exception that the name of the entryman is given as Frances A. Justice and the land, with other land, is described as lots 3 and 4, and the east half of the southwest quarter of section 19, township 38, north of range 6, east of the Boise meridian.

5.

INDICTMENT NO. 617.

That heretofore, in the United States District [228] Court for the Northern Division, District of Idaho, on the 6th day of November, 1905, a Grand Jury, duly and regularly empaneled and sworn, returned an indictment against the defendant William F. Kettenbach, with William B. Benton and Clarence W. Robnett, charging the defendants with the crime of conspiracy to defraud the United States in violation of Section 5440, R. S. U. S., which indictment is numbered 617, returned by the Grand Jury and filed by the Clerk of the above-entitled court on November 6th, 1905, and now appears of record therein, which indictment is here referred to and made a part hereof as fully as if here set out.

That in said indictment appear Counts One, Two and Three, and in each of said Counts there appears

substantially the same allegation as appears in Count One of Indictment No. 605, except that the name of the entryman in Count One of said Indictment is given as John H. Long, and the land is described as lot 2, southwest quarter of the northeast quarter, and the south half of the northwest quarter of section 24, township 39, north of range 3, east of Boise meridian, and in Count Two, the name of the entryman is given as Francis M. Long and the land is described as the north half of the southwest quarter and north half of the southeast quarter of section 13, township 39, north of range 3, east of Boise meridian; and in Count Three the name of the entryman is given as Benjamin F. Long and the land is described as the south half of the northwest quarter and the south half of the northeast quarter of section 13, township 39, north of range 3, E. B. M., together with other lands.

6.

INDICTMENT NO. 618.

That in the District Court of the United States within and for the District of Idaho, Northern Division, [229] on the 6th day of November, 1905, a Grand Jury, duly and regularly empaneled and sworn, returned an indictment against two of the defendants herein, to wit: George H. Kester and William F. Kettenbach, together with Fred Emery and C. W. Colby, charging the said defendants with conspiracy to defraud the United States in violation of Section 5440, R. S. U. S., which said indictment is No. 618, returned by the Grand Jury, and filed by the Clerk of the above-entitled court on November

6th, 1905, and now appears on file therein, which indictment is here referred to and made a part hereof, as fully as if here set out.

That said indictment contains Counts One and Two, and in each of said counts appear substantially the same allegations as appear in Count One of Indictment No. 605, except that the name of the entryman in Count One thereof is given as James C. Evans, and the land is described as the south half of the northwest quarter and the west half of the southwest quarter of section 25, township 39, north of range 3, east of Boise meridian, with other lands, and in Count Two thereof the name of the entryman is designated as Charles Dent and the land is described as the north half of the northeast quarter, and the north half of the northwest quarter of section 14, in township 39, north of range 3, east of Boise meridian, with other lands.

7.

INDICTMENT NO. 635.

That in the United States District Court for the Central Division, District of Idaho, on the 22d day of March, 1907, a Grand Jury duly and regularly empaneled and sworn, returned an indictment against the defendants herein, together with Isham N. Smith, John B. West and Clarence W. Robnett, charging the defendants with [230] conspiracy to defraud the United States in violation of Section 5440, R. S. U. S., which said indictment was returned by the Grand Jury and filed by the Clerk of the above-entitled court March 22d, 1907, and which indictment is numbered 635, now appears of record in the above-

entitled court, and is made a part hereof as fully as if here set out.

That in said indictment appear substantially the same allegations as appear in Indictment No. 605, with the exception of the name of the entryman and the description of the land. The name of the entryman given in Count One thereof is Edward M. Lewis, and the land is described as the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 29, township 39, north of range 5, east of Boise meridian, and in Count Two thereof the name of the entryman is given as Hiram F. Lewis and the land is described as the northwest quarter of section 20, township 38, north of range 5, east of Boise meridian. In Count Three thereof the name of the entryman is given as Charles Carey, and the land is described as the north half of the northeast quarter and the north half of the northwest quarter of section 15, township 38, north of range 6, east of Boise meridian, and in Count Four thereof, the name of the entryman is designated as Guy L. Wilson, and the land is described as lots 3 and 4, and the northeast quarter of the southwest quarter and the northwest quarter of the southeast quarter of section 19, township 39, north of range 5, east of Boise meridian; and in Count Five thereof the name of the entryman is given as Frances A. Justice and the land is described as lots 3 and 4, and the east half of the southwest quarter of [231] section 19, township 38, north of range six, east of Boise meridian, with other lands.

8.

INDICTMENT NO. 637.

There heretofore in the United States District Court within and for the Central Division, District of Idaho, a Grand Jury in the above-entitled court, duly and regularly empaneled and sworn, returned an indictment against the defendants, George H. Kester, William F. Kettenbach and William Dwyer, together with Isham N. Smith, John B. West, Clarence W. Robnett, John Doe and Richard Roe, whose true names are to the Grand Jurors unknown, and divers other persons whose true names are to the Grand Jurors unknown, which said indictment was returned by the Grand Jury and filed by the Clerk of said court on April 12, 1907, now appears of record therein, and is made a part hereof as fully as if here set out, which said indictment is in one count, and involves the entries of Edward M. Lewis, Hirma F. Lewis, Charles Carey, Guy L. Wilson, Frances A. Justice, Charles W. Taylor, Edgar J. Taylor, and divers other persons whose names are alleged to be to the Grand Jurors unknown, and in which appears substantially the same allegation as appears in Count One of Indictment No. 605, and which said indictment herein referred to is No. 637, and embraces the land hereinbefore in said indictments described.

9.

That to each and all of the indictments herein referred to, the defendants entered their pleas of "Not Guilty," issues of fact were joined thereon, and thereafter in the United States District Court for the Northern Division, District of Idaho, at Moscow,

in the County of Latah, in said District, on the 17th day of May, A. D. [232] 1907, the defendants herein, William F. Kettenbach, George H. Kester and William Dwyer were tried on said indictment No. 615, returned and filed November 6, 1905, charging the defendants with the crime of conspiracy to defraud the United States in violation of Section 5440, R. S. U. S., in which indictment the same issues were involved as are involved in the above-entitled cause, and in which trial there was used the evidence of Rowland A. Lambdin, Fred W. Shaeffer, Ivan R. Cornell and many of the other entrymen whose claims are involved in the above-entitled cause, and in which an effort is made to have the patents set aside.

10.

That after a trial before the jury in said court and in said cause, the jury returned a verdict of "Not Guilty" upon Counts One, Two and Five of indictment No. 615, which verdict is hereto attached, marked Exhibit "A," and made a part hereof as fully as if here set out, and which was filed June 17, 1907, and now appears of record and on file in the above-entitled court.

11.

That thereafter, on the 31st day of January, 1910, the plaintiff, The United States of America, by and through its proper officers, in the causes of The United States of America, Plaintiff, v. William F. Kettenbach, George H. Kester and William Dwyer, Indictment No. 615; and The United States of America v. William Dwyer, George H. Kester and Will-

iam F. Kettenbach, Indictment No. 607; and The United States of America v. William Dwyer, George H. Kester, William F. Kettenbach and Jackson O'Keefe, No. 605, moved for a consolidation of said indictments, which motion is now on file in said District Court within and for the Central Division, District of [233] Idaho, copy of which is attached hereto, marked Exhibit "B," and made a part hereof as fully as if here set out; and thereafter, on the 15th day of February, 1910, the said Court made an order consolidating said Indictments No. 615, No. 607 and No. 605; and thereafter the defendants moved to consolidate with Indictments No. 615, No. 607 and No. 605, indictments numbered 617, 618, 635 and 637, herein referred to, in so far as they related to the defendants William F. Kettenbach, George H. Kester and William Dwyer, and that a severance be granted as to the remaining defendants in the several indictments; after which the United States dismissed Indictments Numbered 617 and 618 as to defendants Kettenbach and Kester, and the Court made its order consolidating Indictments No. 635 and No. 637 with Indictments No. 615, No. 607 and No. 605.

12.

That after the Government had closed its case in the said trial before a jury, the defendants moved the Court to require the Government to elect upon which indictments it would rely for a conviction, and the Government elected to rely upon Indictments numbered 615, 607 and 605, as consolidated, and thereafter the defendants introduced their evidence in their defense before said jury, in said court, and

after argument of respective counsel and instructions of the Court, the jury retired to consider their verdict, and thereafter returned into court a verdict of "Not Guilty," as charged in the several indictments in the above-entitled causes, exclusive of Counts One, Two and Five in case No. 615, which Counts One, Two and Five were not submitted to the jury for their consideration for the reason that a verdict had theretofore been returned in favor of the defendants finding [234] them not guilty upon said counts, which verdict was duly and regularly filed by the Clerk of said Court on February 26, 1910, now on file herein, and a true copy of which is attached hereto, marked Exhibit "C" and made a part hereof as fully as if here set out.

13.

That in said several indictments the same issues are involved as are involved in the above-entitled cause, to wit: The charge of conspiracy to defraud the United States in violation of Section 5440, R. S. U. S., and to acquire large tracts of public land in violation of the Timber and Stone Laws of the United States, by perjury, subornation of perjury and by procuring entrymen to file upon the land in violation of law, and it will be necessary to use the same evidence in support of the issues in the above-entitled cause as was used in the several criminal actions in support of the indictments on file herein; and to try the defendants upon the complainant's bill in equity in the above-entitled cause is, in effect, to try the defendants twice for the same offense, which is prohibited by the Constitution of the

United States.

14.

That the Government has heretofore elected to prosecute the defendants criminally for the same and identical charges pleaded and alleged in the above-entitled cause, and having elected to rely upon a criminal prosecution for the punishment of the defendants, the complainant should not be heard or permitted to prosecute a civil action at this time for the purpose of depriving the defendants of their property, and for the purpose of trying and punishing the defendants twice for the same offense. [235]

15.

That the said United States District Court within and for the District of Idaho, both for the Northern and Central Divisions, had and acquired jurisdiction of each of the defendants in each of said indictments, and had and possessed jurisdiction of each of the subject matters involved therein; and had and possessed jurisdiction to hear and determine each and all of the matters in issue therein.

WHEREFORE, these defendants pray that their plea of former acquittal be held to be a bar to the prosecution in this action, and that this action be dismissed and that they be permitted to go without day. [236]

THIRD.

For a further, separate and third defense, these defendants, and each thereof, allege:

1.

That the perjury, subornation of perjury and conspiracy alleged and pleaded in complainant's bill

in equity, are barred by the provisions of Sections 1043 and 1044, Revised Statutes of the United States of America.

2.

These defendants deny all unlawful combination, confederation or conspiracy in the said bill charged, without that any other matter or thing material or necessary for these defendants to make answer unto, and not herein and hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM F. KETTENBACH.

GEORGE H. KESTER.

WILLIAM DWYER.

EDNA P. KESTER.

MARTHA E. HALLETT.

GEO. W. TANNAHILL,

Solicitor for Defendants, Residing at Lewiston, Idaho.

[Endorsed]: Filed April 15, 1910. A. L. Richardson, Clerk. [237]

Exhibit "A" [Verdict in Case No. 615].

*United States District Court, Northern Division,
District of Idaho.*

No. 615.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM F. KETTENBACH, GEORGE H.

KESTER and WILLIAM DWYER,

Defendants.

VERDICT.

We, the jury in the above-entitled cause, find the defendant William F. Kettenbach Not Guilty as charged in the first count of the indictment, and we find the defendant William F. Kettenbach Not Guilty as charged in the second count of the indictment, and we find the defendant William F. Kettenbach Guilty as charged in the third count of the indictment and we find the defendant William F. Kettenbach Guilty as charged in the fourth count in the indictment, and we find the defendant William F. Kettenbach Not Guilty as charged in the fifth count of the indictment, and we find the defendant George H. Kester Not Guilty as charged in the first count of the indictment, and we find the defendant George H. Kester Not Guilty as charged in the second count of the indictment, and we find the defendant George H. Kester Guilty as charged in the third count of the indictment, and we find the defendant George H. Kester Guilty as charged in the fourth

count of the indictment, and we find the defendant George H. Kester Not Guilty as charged in the fifth count of the indictment, and we find the defendant William Dwyer Not Guilty as charged in the first count of the indictment, and we find the defendant William Dwyer Not Guilty as charged in the second count of the indictment, and we find the defendant William Dwyer Guilty as charged in the third count of the indictment, and we find the defendant William Dwyer Guilty as charged in the fourth count of the indictment, and we find the defendant William Dwyer Not Guilty as charged in the fifth count of the indictment.

M. D. FREEDENBERG,
Foreman of the Jury.

[Endorsed]: No. 615. In the District Court of the United States for the District of Idaho. United States of America vs. William F. Kettenbach, George H. Kester and William Dwyer. Verdict. Filed June 16, 1907. A. L. Richardson, Clerk. [238]

Exhibit "B" [Motion to Consolidate Cases Nos. 605, 607 and 615].

UNITED STATES OF AMERICA.

In the District Court of the United States for the District of Idaho, Central Division.

No. 615.

UNITED STATES OF AMERICA,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER.

No. 607.

UNITED STATES OF AMERICA,

vs.

WILLIAM DWYER, GEORGE H. KESTER and
WILLIAM F. KETTENBACH.

No. 605.

UNITED STATES OF AMERICA,

vs.

WILLIAM DWYER, GEORGE H. KESTER and
WILLIAM F. KETTENBACH (Impleaded
With JACKSON O'KEEFE).

NOW COMES the United States of America, by Peyton Gordon, Esq., special assistant to the Attorney General of the United States, and attorney for the plaintiff in this behalf, and MOVES the Court to consolidate the above-entitled causes for trial against George H. Kester and William F. Kettenbach and William Dwyer, defendants therein named, said motion being based upon the files and records in said causes.

Boise, Idaho, January 31, 1910.

PEYTON GORDON,

Special Assistant to the Attorney General of the
United States and Attorney for said Plaintiff.

Received copy Feby. 1, 1910.

GEO. W. TANNAHILL,

Atty. for Defts. [239]

**Exhibit "C" [Verdict in Cases Nos. 605, 607
and 615].**

*In the District Court of the United States, District
of Idaho, Northern Division.*

No. 615.

THE UNITED STATES,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER.

No. 605.

THE UNITED STATES,

vs.

JACKSON O'KEEFE, WILLIAM DWYER,
GEORGE H. KESTER and WILLIAM F.
KETTENBACH.

No. 607.

THE UNITED STATES,

vs.

WILLIAM DWYER, GEORGE H. KESTER and
WILLIAM F. KETTENBACH.

We, the jury in the above-entitled consolidated causes, find the defendants, William F. Kettenbach, George H. Kester and William Dwyer, not guilty as charged in the several Indictments, in the above-entitled causes, exclusive of counts one, two, and five in cause numbered 615.

WM. B. ALLISON,
Foreman.

[Endorsed]: No. 615—Consolidated. U. S. District Court, Northern Division, District of Idaho. The United States vs. William F. Kettenbach et al. Verdict. Filed Feb. 26, 1910. A. L. Richardson, Clerk. [240]

Appearance of C. W. Robnett [Defendant].

Spokane, Wash., April 7th, 1910.

A. L. Richardson,
Clerk of U. S. Court,
Boise, Idaho.

Dear Sir:

Please enter my general appearance in the following cause:

EQUITY—No. 406.

United States

vs.

Wm. F. Kettenbach et al.

Yours,

C. W. ROBNETT,
Defendant.

[Endorsed]: Filed April 16, 1910. A. L. Richardson, Clerk. [241]

*In the Circuit Court of the United States, Ninth
Judicial Circuit, District of Idaho, Northern
Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, ELIZABETH W.
THATCHER, CURTIS THATCHER,
ELIZABETH KETTENBACH,

Defendants.

**Stipulation [That Replications to Answers of
Thatcher et al. to Bill Stand as Replications
to Answers to Bill as Amended].**

STIPULATION.

In the above-entitled cause complainant and defendants, Eliza W. Thatcher, Curtis Thatcher and Elizabeth Kettenbach, by their respective solicitors, agree and stipulate:

That the replications of complainant heretofore filed to the answers of defendants last named shall stand and be considered as the replications of the complainant to the answers of Eliza W. Thatcher, Curtis Thatcher and Elizabeth Kettenbach to Bill of Complaints as amended.

Dated March 31st, 1910.

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitor for Complainant.

EUGENE A. COX,

Solicitor for Defendants, Elizabeth Thatcher, Curtis Thatcher, Elizabeth Kettenbach.

[Endorsed]: Filed April 25, 1910. A. L. Richardson, Clerk. [242]

**[Exceptions to Answer of William F. Kettenbach
et al.]**

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH et al.,
Defendants.

**EXCEPTIONS OF COMPLAINANT TO AN-
SWER OF DEFENDANTS FOR IMPER-
TINENCE.**

Exceptions taken by United States of America, complainant to the answer of the defendants, William F. Kettenbach, George H. Kester, William Dwyer, Elizabeth White, Edna P. Kester, Martha E. Hallett, and Kittie E. Dwyer, to complainant's Bill in Equity, in said cause.

First Exception: For that the allegations beginning with the first word of the first line of page 35 of said answer, in the words following, to wit: "For a further separate and second defense, and for a plea in bar" to and including the words, "And that this action be dismissed, and that they be permitted to go without day," being the last word of the last line of page 47, are impertinent, and ought to be expunged.

Second Exception: For that the allegation on page 48 of said answer, being paragraph 1, that is to say, that the perjury, subornation of perjury, and conspiracy alleged and pleaded in complainant's Bill in Equity are barred by the provisions of Section 1043 and 1044, Revised Statutes of the United States of America," is impertinent, and ought to be expunged.

Third Exception: For that the exhibits marked "a," "b," and "c," attached to and made a part of and respectively following page 48 of said answer are impertinent [243] and ought to be expunged.

In all of which particulars the said complainant humbly insists that such portions of said defendants' answer herein referred to are irrelevant and impertinent.

WHEREFORE, The said complainant excepts thereto and humbly prays that the impertinent matter in said answer of said defendants, excepted to as aforesaid, may be expunged.

PEYTON GORDON,
Special Assistant to the Attorney General, Solicitor
for Complainant.

[Endorsed]: Filed May 2, 1910. A. L. Richardson, Clerk. [244]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

Order [Sustaining Exception to Certain Answers].

On this day it was ordered that complainant's exception to certain answers of the defendants herein be, and the same is hereby, sustained.

Dated May 11, 1910. [245]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
WILLIAM DWYER, ELIZABETH WHITE,
EDNA P. KESTER, MARTHA E. HALLETT,
KITTIE E. DWYER, and Others,

Defendants.

**Replication to Answer [of William F. Kettenbach
et al. to Bill as Amended].**

REPLICATION TO ANSWER.

Replication of complainant in the above-entitled cause to the answer of William F. Kettenbach, George H. Kester, William Dwyer, Elizabeth White, Edna P. Kester, Martha E. Hallett, and Kittie E. Dwyer, defendants, to complainant's Bill of Complaint as Amended.

This replicant, saving and reserving to itself all advantage of exception, to the manifold insufficiencies, errors and uncertainties of the answer of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Elizabeth White, Edna P. Kester, Martha E. Hallett, and Kittie E. Dwyer, for replication thereto, says:

That it will aver, maintain and prove its said Bill of Complaint as Amended, to be true and sufficient, and that the said answer of the said defendants, [246] William F. Kettenbach, George H. Kester, William Dwyer, Elizabeth White, Edna P. Kester, Martha E. Hallett, Kittie E. Dwyer is untrue, evasive and insufficient.

WHEREFORE, it prays relief as in its said Bill of Complaint as Amended set forth.

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitor for Complainant.

[Endorsed]: Filed June 6th, 1910. A. L. Richardson, Clerk. [247]

[Marshal's Return of Service of Alias Subpoena Ad Respondendum, etc.]

I hereby certify that I received the within alias subpoena ad respondendum, together with eighteen duplicates of alias subpoena ad respondendum, and eighteen certified copies of amendments to the bill of complaint, and three certified copies of original bill of complaint, at Moscow, Latah County, Idaho, on the 18th day of March, 1910, and served the same upon The Idaho Trust Company by handing to and leaving with Frank W. Kettenbach, president of the said The Idaho Trust Company, a duplicate of the within alias subpoena ad respondendum, together with a certified copy of amendments to bill of complaint, and a certified copy of the original bill of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 21st day of March, 1910.

Served the same upon The Lewiston National Bank by handing to and leaving with W. Thompson, cashier of the said The Lewiston National Bank, a duplicate of the within alias subpoena ad respondendum, together with a certified copy of the amendments to bill of complaint, and a certified copy of the original bill of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 21st day of March, 1910.

Served the same upon William F. Kettenbach by handing to and leaving with the said William F. Kettenbach a duplicate of the within alias subpoena ad respondendum, together with a certified copy of amendments to bill of complaint, personally at Lew-

iston, Nez Perce County, Idaho, on the 22d day of March, 1910, the said William F. Kettenbach accepting service in writing of the original bill of complaint as of March 22d, 1910, at Lewiston, Idaho.

Served the same upon Elizabeth White by handing to and leaving with the said Elizabeth White a duplicate of the within alias subpoena ad respondendum, together with a certified copy of the amendments to bill of complaint, and a certified copy of the original bill of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 22d day of March, 1910.

Served the same upon Kittie E. Dwyer by handing to and leaving with the said Kittie E. Dwyer, a duplicate of the within alias subpoena ad respondendum, together with a certified copy of the amendments to bill of complaint, and a certified copy of the original bill of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 22d day of March, 1910.

Served the same upon Martha E. Hallett, Geo. H. Kester, and William Dwyer by handing to and leaving with Geo. W. Tannahill, attorney for the said Martha E. Hallett, Geo. H. Kester, and William Dwyer, a duplicate of the within alias subpoena ad respondendum, together with a certified copy of the amendments to bill of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 22d day of March, 1910, the said Geo. W. Tannahill accepting service in writing of the original bill of complaint as of the 22d day of March, 1910.

Served the same upon Elizabeth Kettenbach and

Elizabeth W. Thatcher by handing to and leaving with Eugene A. Cox, attorney for the said Elizabeth Kettenbach and Elizabeth W. Thatcher, a duplicate of the within alias subpoena ad respondendum, together with a certified copy of the amendments to bill of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 22d day of March, 1910, the said Eugene A. Cox accepting service in writing of the original bill of complaint as of the 22d day of March, 1910.

Served the same upon Curtis Thatcher by handing to and leaving with the said Curtis Thatcher, a duplicate [248] of the within alias subpoena ad respondendum, together with a certified copy of the amendments to bill of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 22d day of March, 1910, the said Curtis Thatcher accepting service in writing of the original bill of complaint as of the 22d day of March, 1910.

Served the same upon The Clearwater Timber Company by handing to and leaving with James E. Babb, Statutory Agent of the said Clearwater Timber Company, a duplicate of the within alias subpoena ad respondendum, together with a certified copy of the amendments to bill of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 22d day of March, 1910, the said James E. Babb accepting service in writing of the original bill of complaint for the said Clearwater Timber Company as of the 22d day of March, 1910.

Served the same upon the Western Land Com-

pany by handing to and leaving with A. L. Morgan of the firm of Morgan & Morgan, attorneys for the said Western Land Company, a duplicate of the within alias subpoena ad respondendum, together with a certified copy of the amendments to bill of complaint, personally, at Moscow, Latah County, Idaho, on the 24th day of March, 1910, the said A. L. Morgan accepting service in writing of the original bill of complaint for the said Western Land Company as of the 24th day of March, 1910.

Served the same upon Edna P. Kester by handing to and leaving with the said Edna P. Kester, a duplicate of the within alias subpoena ad respondendum, together with a certified copy of the amendments to bill of complaint and a certified copy of the original bill of complaint, personally, at Spirit Lake, Kootenai County, Idaho, on the 26th day of March, 1910.

Served the same upon the Potlatch Lumber Company by handing to and leaving with A. W. Laird, Statutory Agent of the said Potlatch Lumber Company, a duplicate of the within alias subpoena ad respondendum, together with a certified copy of the amendments to bill of complaint, personally, at Potlatch, Latah County, Idaho, on the 2d day of April, 1910, the said A. W. Laird accepting service in writing of the original bill of complaint for the said Potlatch Lumber Company as of the 2d day of April, 1910.

After due search and diligent inquiry, I am unable to find the defendants Clarence W. Robnett, Robert O. Waldman, and Geo. E. Thompson within

the District of Idaho.

S. L. HODGIN,
U. S. Marshal.
By J. E. Greene,
Deputy.

Moscow, Idaho, April 4th, 1910. [249]

*In the Circuit Court of the United States for the
Northern Division of the District of Idaho.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NATIONAL
BANK OF LEWISTON, IDAHO, THE
CLEARWATER TIMBER COMPANY,
THE WESTERN LAND COMPANY,
GEORGE E. THOMPSON, ELIZABETH W.
THATCHER, CURTIS THATCHER,
ELIZABETH WHITE, EDNA P. KESTER,
ELIZABETH KETTENBACH, MARTHA
E. HALLETT, KITTIE E. DWYER, POT-
LATCH LUMBER COMPANY, ROBERT
O. WALDMAN,

Defendants.

Subpoena Ad Respondendum.

The President of the United States of America, to
William F. Kettenbach, George H. Kester,
Clarence W. Robnett, William Dwyer, The

Idaho Trust Company, The Lewiston National Bank of Lewiston, Idaho, The Clearwater Timber Company, The Western Land Company, George E. Thompson, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, Kittie E. Dwyer, Potlatch Lumber Company, Robert O. Waldman, Greeting:

You and each of you are hereby commanded that you be and appear in said Circuit Court of the United States, at the courtroom thereof, in Moscow in said District, on the first Monday of April next, which will be the 4th day of April, A. D. 1910, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said Court, wherein The United States of America is complainant and you are defendants and further to do and receive what our said Circuit Court shall consider in this behalf and [250] this you are in nowise to omit under the pains and penalties of what may befall thereon.

And this is to COMMAND you the MARSHAL of said District, or your DEPUTY, to make due service of this our WRIT of SUBPOENA and to have then and there the same.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, and the Seal of our said Circuit Court affixed at Boise in said District, this 9th day of March in the year of our Lord One Thousand Nine Hundred and Ten and of the Independence of the

United States the One Hundred and Thirty-fourth.

A. L. RICHARDSON,
Clerk.

[Endorsed]: Filed June 14, 1910. A. L. Richardson, Clerk. [251]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, and Others,
Defendants.

**Motion [for Order Permitting an Amendment to
Bill].**

MOTION.

COMES NOW the United States of America, complainant in the above-entitled cause, by Peyton Gordon, Special Assistant to the Attorney General, its Solicitor, and moves the Court for an order permitting an amendment to the Bill of Complaint in said cause, by interlineation, as follows:

By inserting after the words and name, "Fred W. Shaeffer," in the eleventh line from the bottom of page twelve, in the second line from the top of page fourteen, in the eighth line from the bottom of page fourteen, and in the third and fourteenth lines from the top of page sixteen of the said Bill of Complaint, the following name, to wit, "Joseph B. Clute."

The complainant further moves the Court for an order permitting an amendment to the Bill of Complaint in the above-entitled cause, by interlineation as follows:

By inserting on page twenty-nine of said Bill of Complaint, after the words, "the tract last aforesaid," in the last line on said page, the following, [252] to wit:

"Joseph B. Clute, on the 24th day of March, 1903, made his application to enter, and on the 17th day of June, 1903, did make entry of the tract of land described as the south half of the northeast quarter, and the east half of the southeast quarter, of section twenty-six, in township thirty-nine, north of range 3 east, Boise meridian, and thereafter, on the third day of August, 1904, a patent was issued by the said United States, conveying to the said Joseph B. Clute, the tract last aforesaid."

The complainant further moves the Court for an order permitting an amendment to the Bill of Complaint in the above-entitled cause, as follows:

By striking out all that follows the words, "the United States," in the twenty-first line from the top of page 45½, to and including the words, "parties defendant to this bill," in the thirteenth line from the top of page 46 of said Bill of Complaint, and inserting in lieu thereof, the following:

"And the said Robert O. Waldman hereinbefore named and alleged to have made entry of a certain described tract of public land, did thereafter, by a deed of conveyance in which his wife joined, convey said tract and such title as was by him acquired,

to the defendant, Clarence W. Robnett, and the said Clarence W. Robnett and his wife did thereafter convey the same to the defendant, Elizabeth White, and the said Clarence W. Robnett and wife did thereafter convey the said tract of land to the defendant, the Lewiston National Bank, and the said Elizabeth White did thereafter convey the [253] said tract of land to the said Lewiston National Bank, a body corporate organized and existing under and in virtue of the laws of the United States relative to National Banks by which said body corporate, the said tract of land, and the title thereto was held at the date of the filing of the original Bill of Complaint and at the time of the recording of the notice of *lis pendens* in this cause, the said corporate defendant having taken the title to said tract of land with the full knowledge, notice, information and advice of and concerning the facts hereinbefore alleged and well knowing that the said entry and the title issued thereon was unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States.”

“And the said Joseph B. Clute hereinbefore named, having as aforesaid made entry of a certain tract of public land which tract is hereinbefore described in connection with the name of the said Clute in making his entry thereof, did thereafter convey the same to the defendants, William F. Kettenbach, and George H. Kester, and the said William F. Kettenbach and George H. Kester, thereafter by a deed of conveyance in which they were joined by their respective wives, did convey said tract of land to the

said Idaho Trust Company, a body corporate, organized and existing under and in virtue of the laws of the State of Idaho, by which said body corporate said tract of land is now held, the said corporate defendant having taken the title to said last hereinbefore mentioned tract of land with the full knowledge, notice, information and advice of and concerning the facts hereinbefore alleged, and well knowing that the said entry and the title issued thereon was unlawful, corrupt, fraudulent, invalid and voidable, [254] at the suit of the United States.”

PEYTON GORDON,

Special Assistant to the Attorney General,
Solicitor for Complainant.

[Endorsed]: Filed July 5th, 1910. A. L. Richardson, Clerk. [255]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

Affidavit [in Support of Motion to Amend Bill].

AFFIDAVIT.

State of Idaho,

County of Ada,—ss.

Peyton Gordon, being first duly sworn, on oath, deposes and says: That he is a Special Assistant to

the Attorney General of the United States, and is solicitor for the complainant in the above-entitled cause, and that he makes this affidavit for and on behalf of the complainant, the United States.

That the said complainant being desirous of amending its Bill of Complaint in said cause, and having filed and served a copy of a motion for such amendments upon the solicitors representing all of the defendants who appeared and answered the Bill of Complaint, further says:

That said motion and said proposed amendments are not made for the purpose of vexation or delay, and that the matter contained in said proposed amendments is material, and could not, with reasonable diligence have been sooner introduced into the said bill.

PEYTON GORDON. [256]

Subscribed and sworn to before me this 5th day of July, 1910.

A. L. RICHARDSON,
Clerk of the United States Circuit Court.

[Endorsed]: Filed July 5th, 1910. A. L. Richardson, Clerk. [257]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Stipulation [That Idaho Trust Co. et al. may have
Certain Benefit by Way of Defense].**

STIPULATION.

It is hereby stipulated by and between the complainant and the Idaho Trust Company, the Lewiston National Bank of Lewiston, Idaho, the Clearwater Timber Company, and the Potlatch Lumber Company, that the said defendants, and each of them may have, without the necessity of any further or additional answer or plea, or both, by them, or any of them, any and all benefits they might have had on or after May 11, 1910, by way of defense, growing out of the verdict on Indictments Nos. 605, 607, 615, 617, 618, 635, and 637 in the District Court of the United States for the District of Idaho.

It is hereby further stipulated that complainant shall not by this stipulation be deprived of any benefit or advantage, either by way of exception, demurrer, motion, replication or otherwise, which it may have had if the matters aforesaid had been pleaded by way of answer, plea, or both, on or after the 11th day of May, 1910, and complainant's exceptions to

the answers of said defendants had been sustained and the pleas of said defendants had been overruled by the above-entitled court. [258]

PEYTON GORDON,

Special Assistant to the Attorney General,
Solicitor for Complainant.

JAMES E. BABB,

Solicitor for Defendants, Idaho Trust Company,
Lewiston National Bank, of Lewiston, Idaho,
Clearwater Timber Company, Potlatch Lumber
Company.

[Endorsed]: Filed July 5, 1910. A. L. Richardson,
Clerk. [259]

*In the Circuit Court of the United States for the Dis-
trict of Idaho, Northern Division.*

· IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO
TRUST COMPANY, THE LEWISTON
NATIONAL BANK OF LEWISTON,
IDAHO, THE CLEARWATER TIMBER
COMPANY, THE WESTERN LAND COM-
PANY, GEORGE E. THOMPSON,
ELIZABETH W. THATCHER, CURTIS
THATCHER, ELIZABETH WHITE,

EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KITTIE E. DWYER, POTLATCH LUMBER COMPANY, ROBERT O. WALDMAN,

Defendants.

Stipulation [Permitting Amendment of Bill, etc.]

STIPULATION.

IT IS HEREBY AGREED AND STIPULATED by and between the parties to the above-entitled cause that the complainant may have an order in the above-entitled court, permitting it to amend its Bill of Complaint in said cause by interlineation as follows:

By inserting after the words and name, "Fred W. Shaeffer," in the eleventh line from the bottom of page twelve, in the second line from the top of page fourteen, in the eighth line from the bottom of page fourteen, and in the third and fourteenth lines from the top of page sixteen of the said Bill of Complaint, the following name, to wit, "Joseph B. Clute."

By inserting on page twenty-nine of said Bill of Complaint, after the words, "the tract last aforesaid," in the last line on said page, the following, to [260] wit:

"Joseph B. Clute, on the 24th day of March, 1903, made his application to enter, and on the 17th day of June, 1903, *made his application to enter, and on the 17th day of June, 1903,* did make entry of the tract of land described as the south half of the northeast quarter, and the east half of the southeast quarter, of section twenty-six, in township thirty-nine, north of

range 3 east, Boise meridian, and thereafter, on the third day of August, 1904, a patent was issued by the said United States, conveying to the said Joseph B. Clute, the tract last aforesaid."

By striking out all that follows the words, "the United States," in the twenty-first line from the top of page 45½, to and including the words, "parties defendant to this bill," in the thirteenth line from the top of page 46 of said Bill of Complaint, and inserting in lieu thereof, the following:

"And the said Robert O. Waldman hereinbefore named and alleged to have made entry of a certain described tract of public land, did thereafter, by a deed of conveyance in which his wife joined, convey said tract and such title as was by him acquired, to the defendant, Clarence W. Robnett, and the said Clarence W. Robnett and his wife did thereafter convey the same to the defendant, Elizabeth White, and the said Clarence W. Robnett and wife did thereafter convey the said tract of land to the defendant, the Lewiston National Bank, and the said Elizabeth White did thereafter convey the said tract of land [261] to the said Lewiston National Bank, a body corporate organized and existing under and in virtue of the laws of the United States relative to National Banks by which said body corporate, the said tract of land, and the title thereto was held at the date of the filing of the original Bill of Complaint and at the time of the recording of the notice of *lis pendens* in this cause, the said corporate defendant having taken the title to said tract of land with the full knowledge, notice, information and advice of and

concerning the facts hereinbefore alleged and well knowing that the said entry and the title issued thereon was unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States.”

“And the said Joseph B. Clute hereinbefore named, having as aforesaid made entry of a certain tract of public land which tract is hereinbefore described in connection with the name of the said Clute in making his entry thereof, did thereafter convey the same to the defendants, William F. Kettenbach, and George H. Kester, and the said William F. Kettenbach and George H. Kester, thereafter by a deed of conveyance in which they were joined by their respective wives, did convey said tract of land to the said Idaho Trust Company, a body corporate, organized and existing under and in virtue of the laws of the State of Idaho, by which said body corporate said tract of land is now held, the said corporate defendant having taken the title to said last hereinbefore mentioned tract of land with the full knowledge, notice, information and advice of and concerning the facts hereinbefore alleged, and well knowing that the said entry and the title issued thereon was unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States.” [262]

II.

It is further stipulated by and between the Complainant and William F. Kettenbach, George H. Kester, William Dwyer, The Clearwater Timber Company, The Western Land Company, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E.

Hallett, Kittie E. Dwyer, and the Potlatch Lumber Company, parties hereto that the answers heretofore filed by and on behalf of said last named parties defendant in the said cause to the Complainant's Bill of Complaint as said answers stand of record after the entry of the order of the Court allowing the exceptions of the complainant to certain of the answers of several of the said defendants shall stand as their answers to the complainant's Bill of Complaint as amended in the particulars hereinbefore set forth in this stipulation.

III.

It is further stipulated by and between the complainant and the parties defendant named in the preceding paragraph hereof that the disclaimers heretofore filed by and on behalf of certain of the said defendants to the complainant's Bill of Complaint in said cause shall stand as and for their disclaimers to the complainant's Bill of Complaint as amended in the particulars hereinbefore set out in this stipulation.

IV.

It is further stipulated by and between the complainant and the parties named and mentioned in paragraph II hereof that the replications heretofore filed by and on behalf of the complainant in the above-entitled cause to the answers and disclaimers of the said several defendants in said cause to the complainant's Bill of Complaint [263] shall stand as the replications to said disclaimers and answers herein

referred to and mentioned.

PEYTON GORDON,
Special Assistant to the Attorney General, Solicitor
for Complainant.

JAMES E. BABB,
Solicitor for Lewiston National Bank, Idaho Trust
Company, Potlatch Lumber Company, Clear-
water Timber Company, Defendants.

GEO. W. TANNAHILL,
Solicitor for William F. Kettenbach, George H. Kes-
ter, William Dwyer, Elizabeth White, Edna P.
Kester, Martha E. Hallett, Kittie E. Dwyer,
Defendants.

MORGAN & MORGAN,
Solicitor for Western Land Company, Defendants.

EUGENE A. COX,
Solicitor for Elizabeth Kettenbach, Curtis Thatcher,
and Eliza W. Thatcher, Defendants.

C. W. ROBNETT,
Defendant.

[Endorsed]: Filed July 5th, 1910. A. L. Rich-
ardson, Clerk. [264]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Number 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH and Others,
Defendants.

Order [Allowing Amendment of Bill].

ORDER.

A motion having been heretofore made and filed on behalf of the complainant, for an order of this Court allowing it to amend its Bill of Complaint in the above-entitled cause, by interlineation as to the matter, and in the words, names and figures in said motion set out and described, and such of the defendants to the said cause who had appeared and answered consenting to the granting of the motion, it is hereby ordered that the said complainant be, and hereby is allowed to amend its Bill of Complaint in said cause by interlineation as to the matter, and in the words, names and figures set out in said motion and stipulation, in which said defendants give their consent.

Dated this 5th day of July, 1910.

FRANK S. DIETRICH,

Judge.

O. K.—GEO. W. TANNAHILL.

JAMES E. BABB.

EUGENE A. COX.

MORGAN & MORGAN.

C. W. ROBNETT.

[Endorsed]: Filed July 5, 1910. A. L. Richardson, Clerk. [265]

*In the Circuit Court of the United States for District
of Idaho.*

IN EQUITY—Nos. 388, 406 and 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH and Others,
Defendants.

**Order [Appointing Leo Longley Special Examiner
to Take Testimony at Los Angeles, Cal.].**

ORDER.

Upon the application of the complainant in the above-entitled causes, it is this 15th day of July, 1910, ordered that Leo Longley, of Los Angeles, California, be, and he is hereby appointed and constituted a Special Examiner of this Court, for the purpose of taking testimony in the said causes, and he is authorized and empowered as such Special Examiner to take the testimony therein of such witnesses as may be offered by either party at Los Angeles, California.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed July 15th, 1910. A. L. Richardson, Clerk. [266]

**[Order Extending Time to October 15, 1910, for
Taking of Testimony, etc.]**

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH and Others,
Defendants.

Upon application of the complainant, by Peyton Gordon, Special Assistant to the Attorney General, its solicitor, and a number of the defendants through their solicitors, George W. Tannahill, and James E. Babb, and C. C. Cavanah.

It is ordered that the time for the taking of the testimony in the above-entitled cause be, and the same hereby is extended to and including the 15th day of October, 1910. The complainant to begin the taking of its testimony on the 22d day of August, 1910.

Dated July 15, 1910.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed July 15, 1910. A. L. Richardson, Clerk. [267]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH and Others,
Defendants.

**Order [Appointing Warren Truitt Special Examiner
to Take Testimony].**

The parties to this cause having requested the Court to appoint an Examiner,

It is hereby ordered, that Warren Truitt, Esq., of Moscow, Idaho, be and he hereby is appointed a Special Examiner herein to take the testimony in this cause, and to report the same to the Court with all convenient speed. His compensation for such services will be at the rate of \$10.00 per diem.

Dated July 15th, 1910.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed July 15, 1910. A. L. Richardson, Clerk. [268]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Appointing A. M. Wing Special Examiner
to Take Testimony at Portland, Oregon].**

ORDER.

Upon the application of complainant in the above-entitled causes, it is this 15th day of July, 1910, ordered, that A. M. Wing of Portland, Oregon, be, and he is hereby appointed and constituted a Special Examiner of this Court for the purpose of taking testimony in the said causes and he is authorized and empowered as such Special Examiner to take the testimony herein of such witnesses as may be offered by either party at Portland, Oregon.

FRANK S. DIETRICH,

District Judge. [269]

**[Praeipie for Issuance of Subpoena Returnable at
Moscow.]**

*In the Circuit Court, United States, District of
Idaho.*

IN EQUITY—406.

THE UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

The Clerk of said Court will issue Subpoena for the following named persons to appear before the Examiner of said Court, at Moscow, at 9 o'clock A. M., on the 22d day of August, 1910, then and there to testify in behalf of the United States:

Henry Roe.

This 18th day of July 1910.

PEYTON GORDON,

Special Asst. to the Attorney General.

[Endorsed]: Filed July 18th, 1910. A. L. Richardson, Clerk. [270]

**[Praecipe for Issuance of Subpoena Returnable at
Lewiston, Idaho.]**

*In the Circuit Court, United States, District of
Idaho.*

EQUITY # —.

THE UNITED STATES,

vs.

WM. F. KETTENBACH et al.

The Clerk of said Court will issue Subpoena for the following named persons to appear before Hon. Warren Truitt, Special Examiner for said Court, at Room 301, Weisginber Bld., in Lewiston, Idaho, at 9 o'clock A. M., on the 23d day of August, 1910, then and there to testify in behalf of the United States:

In Blank.

This 20th day of July, 1910.

PEYTON GORDON,

Spl. Asst. to Attorney General.

[Endorsed]: Filed July 20, 1910. A. L. Richardson, Clerk. [271]

**[Praeipie for Issuance of Subpoena Returnable at
Lewiston, Idaho.]**

*The Circuit Court of the United States for the Dis-
trict of Idaho, Northern Division.*

IN EQUITY—No. 406.

UNITED STATES OF AMERICA

vs.

WILLIAM F. KETTENBACH et al.

To the Clerk of said Court:

Sir: Issue subpoena, returnable before Hon. Warren Truitt, Special Examiner for said Court, at Room 301 Weisgerber Bldg., Lewiston, Idaho, at 9 o'clock in the morning of August 26, 1910, for the following named witnesses, to testify for the plaintiff:

James C. Evans, Coeur d'Alene or Wardner, Ida.

Respectfully,

PEYTON GORDON,

Special Assistant to the Attorney General of the
U. S.

[Endorsed]: Filed Aug. 11, 1910. A. L. Richardson, Clerk. [272]

**[Praeceptum for Issuance of Subpoena Returnable at
Lewiston, Idaho.]**

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA

vs.

WILLIAM F. KETTENBACH et al.

To the Clerk of said Court:

Sir: Issue subpoena, returnable before Hon. Warren Truitt, Special Examiner for said Court, at room 301 Weisgerber Bldg., Lewiston, Idaho, at 9 o'clock in the morning of August 30, 1910, for the following named witnesses, to testify for the complainant:

William E. Helkenberg; Edward M. Hyde;
George Morrison; Wren Pierce; Benjamin
F. Bashor; George W. Harrington.

Respectfully,

PEYTON GORDON,

Special Assistant to the Attorney General of the
United States.

[Endorsed]: Filed Aug. 11, 1910. A. L. Richardson, Clerk. [273]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406, 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH et al.,
Defendants.

**Order [Appointing Warren Truitt Special Examiner
to Take Testimony at Spokane, Wash.].**

ORDER.

Upon the application of the complainant in the above-entitled causes it is ordered, that Warren Truitt, of Moscow, Idaho, be, and he is hereby appointed and constituted a Special Examiner of this Court, for the purpose of taking testimony in the said causes, and he is authorized and empowered as such Special Examiner to take the testimony therein of such witnesses as may be offered by either party at Spokane, Washington.

FRANK S. DIETRICH,
Judge.

O. K.—GEO. W. TANNAHILL. [274]

[Endorsed]: Filed August 29, 1910. A. L. Richardson, Clerk.

**[Order or Decree That Bill be Taken Pro Confesso
as to Defendant Clarence W. Robnett.]**

*In the Circuit Court of the United States, Ninth Ju-
dicial Circuit, for the District of Idaho, North-
ern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**ORDER TO TAKE BILL PRO CONFESSO
AGAINST DEFENDANT CLARENCE W.
ROBNETT.**

The subpoena in the above-entitled cause having been returned, which return has been filed, and it appearing therefrom that the said subpoena was duly served upon the defendant Clarence W. Robnett, and an appearance having been entered on the part of said defendant Clarence W. Robnett on the 7th day of April, 1910, and since said appearance no demurrer, or plea, or answer having been filed, although said pleading should have been filed before this date, therefore, on motion of Peyton Gordon, Special Assistant to the Attorney General and solicitor for *complaint*, it is ordered and decreed that the bill herein be taken pro confesso as to said defendant Clarence W. Robnett.

Dated this 12th day of September, A. D. 1910.

A. L. RICHARDSON,

Clerk.

[Endorsed]: Filed Sept. 12, 1910. A. L. Richardson, Clerk. [275]

[Subpoena to James C. Evans.]

*In the Circuit Court of the United States for the
District of Idaho.*

The President of the United States of America, to
James C. Evans, Coeur d'Alene or Wardner.

You are hereby commanded to be and appear in
said court at Lewiston, in said District, before Warren
Truitt, Special Examiner, Room 301 Weisberger
Bldg., on Friday, the 26th day of August, 1910, at 9
o'clock A. M., then and there to testify on behalf
of the United States; and not to depart the Court
without leave thereof, or of the District Attorney.
And hereof fail not.

Witness the Hon. FRANK S. DIETRICH, Judge
of said Court, and the Seal thereof affixed on this
11th day of August, 1910.

A. L. RICHARDSON,
Clerk.

I hereby certify that after due search and diligent
inquiry, I am unable to find James C. Evans, the
witness named herein, within the District of Idaho.

S. L. HODGIN,
United States Marshal.
By E. W. Beemer,
Deputy.

[Endorsed]: Filed Sept. 16, 1910. A. L. Richardson, Clerk. [276]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH and Others,

Defendants.

**Stipulation [That Answers of Idaho Trust Co. et
al. Stand as Answers to Bill as Amended, etc.].**

STIPULATION.

WHEREAS, complainant has from time to time by leave of Court made certain amendments to the bill of complaint in said cause, it is now stipulated by and between complainant and defendants, Idaho Trust Company, Lewiston National Bank, Clearwater Timber Company and Potlatch Lumber Company, that the answers of said last named defendants and each of them shall stand as answers to said bill of complaint as amended, and that the replications heretofore filed by complainant to said answers shall stand as the replications thereto, and this stipulation shall take effect as and of the date when the last amendments were made to said bill of complaint and prior to the date of the order appointing examiner.

It is further stipulated that defendant Lewiston National Bank does not by its said answer deny the conveyance by Robert O. Waldman and wife to Clarence W. Robnett and the said Robnett and wife

to Elizabeth White and said Robnett and wife and said Elizabeth White to Lewiston National Bank.

And it is further stipulated that Idaho Trust Company does not deny the conveyance by W. F. Kettenbach and George H. Kester and wives to it of the Joseph B. Clute land, and it is further stipulated that said bank and said trust company, may without any [277] further answer or pleading in the cause, take their evidence concerning the conveyance of the said Waldman and Clute lands to them respectively and the consideration thereof and the *bona fides* thereof.

Dated Sept. 14th, 1910.

PEYTON GORDON,
Special Assistant to the Attorney General of the
United States,

Solicitor for Complainant.

JAMES E. BABB,
Solicitor and of Counsel for Defendants, Lewiston
National Bank, Idaho Trust Co., Clearwater
Timber Co., and Potlatch Lumber Co.

[Endorsed]: Filed Sept. 16, 1910. A. L. Richardson, Clerk. [278]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 388, No. 406, No. 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to November 1, 1910, for
Taking of Testimony].**

By agreement of all the parties hereto, it is hereby ordered that the time for taking the testimony in said causes is extended to and including the 1st day of November, 1910.

Dated this 1st day of October, 1910.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed Oct. 1, 1910. A. L. Richardson, Clerk. [279]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH et al.,

Defendants.

**Stipulation [Concerning Hearing of Motion to
Reopen Causes, etc.].****STIPULATION.**

IT IS HEREBY AGREED by and between counsel for the respective parties in the above-entitled causes that the hearing upon a motion and notice thereon heretofore served and filed in these causes for the purpose of reopening the said causes and the taking of additional and newly discovered testimony

therein, may be heard at a future date by agreement of counsel, and that upon such agreement by counsel as to a date definite and specific on further notice of said hearing, said notice is waived.

IT IS FURTHER AGREED by and between the respective parties thereto that the hearing of this motion, and if the same is granted and such additional testimony taken therein, shall in no manner interfere with the speeding of the causes or the preparation of the briefs on the testimony already taken.

It is further stipulated and agreed by and between the parties to said causes that the deposit slip set out in the affidavit served herewith both in the front and the back of the same is in the handwriting of the defendant Wm. F. Kettenbach, and that the same is a part of the files of the Lewiston National Bank, and that [280] said deposit slip is now on file with the Clerk of this Court in the case of U. S. vs. Kester and Kettenbach, marked Pltfs. Exhibit No. 39.

PEYTON GORDON,

Solicitor for Complainant.

GEO. W. TANNAHILL,

Solicitor for Defendants.

J. E. BABB,

Solicitor for Certain Defendants.

[Endorsed]: Filed April 20, 1911. A. L. Richardson, Clerk. [281]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH et al.,

Defendants.

Notice of Motion [for Order Opening Causes].

NOTICE OF MOTION.

To the Above-named Defendants, Jas. E. Babb, Geo.

W. Tannahill, Your Attorneys, and to Each of
You:

YOU WILL PLEASE TAKE NOTICE that the undersigned, solicitor for complainant, will on the 26th day of April, 1911, before the above-entitled court in the Federal Courtrooms, City of Boise, Idaho, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, will move the Court for an order opening the above-entitled causes for the purpose of introducing additional and newly discovered testimony, in accordance with motion herewith served upon you, together with this notice. Upon the hearing of said motion, counsel will use notice of motion; the motion and the affidavit attached to said motion; all the files and records in the above-entitled causes or so much thereof as may be necessary.

PEYTON GORDON,

Solicitor for Complainant. [282]

Service of the above notice, together with a copy of the motion and the attached affidavit thereto, acknowledged by receipt of copies this 20th day of April, 1911.

GEO. W. TANNAHILL,
Solicitor for Defendants,
J. E. BABB,
Solicitor for Certain Defendants.

[Endorsed]: Filed April 20, 1911. A. L. Richardson, Clerk. [283]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,
Complainant,

vs.

WM. F. KETTENBACH et al.,
Defendants.

Motion [for Order Opening Causes].

MOTION.

Comes now Peyton Gordon, Special Assistant to the Attorney General, solicitor for the complainant in the above-entitled causes, and moves the Court for an order opening the above-entitled causes for the purpose of including in the record in said causes additional and newly discovered evidence, as based upon the affidavit hereto attached to this motion and made a part hereof.

PEYTON GORDON,
Special Assistant to Attorney General. [284]

[Affidavit of Peyton Gordon.]

State of Idaho,
County of Ada,—ss.

Peyton Gordon, being first duly sworn, on oath deposes and says he is Special Assistant to the Attorney General of the United States, and alleges for the complainant in the above-entitled causes, that on the 24th day of October, 1910, the testimony in the above-entitled causes was closed and that the time for preparing and filing briefs in the same on behalf of the complainant has been extended to and including May 20, 1911; that since the closing of said causes, new and additional testimony has been discovered, which said testimony is relevant, important and material in proving the allegations of complainant's Bills of Complaint; further, that said testimony is indispensable for the proper presentation of said causes to the Court on the allegations in said Bills as aforesaid; that said additional testimony was discovered after the closing of the taking of the testimony in said causes as aforesaid and could not with due diligence have been discovered before, and in truth and in fact the existence of such additional testimony was not known to your affiant and could not have been known with all due diligence until a date subsequent to the closing of said testimony as aforesaid; that such newly discovered testimony is of the following nature;

A deposit slip of the Lewiston National Bank, Lewiston, Idaho, which is as follows:

THE LEWISTON NATIONAL BANK,

Lewiston, Idaho.

Deposited by Kittie E. Dwyer

4-26-1904. [285]

two checks given to Wiggin

for cash..... 98.00

50

48

Less cash..... 2.00

96.00

And on the back of said deposit slip:

Guy Wilson..... 8

Greenberg..... 8

Bingham..... 8

McMillan... 8

Mrs. Rowlands..... 8

J. O'Keefe..... 8

Prentice..... 8

E. Taylor..... 8

Dammorell..... 8

Mrs. Justice..... 8

C. W. Taylor..... 8

F. Justice..... 8

96

J. O'Keefe..... 8

88

The purpose of the introduction of this exhibit and the evidence related and incident thereto, is to sup-

port the allegations of plaintiff's Bills of Complaint and show that the defendants, Kester and Kettenbach, paid the filing fees in the land office at Lewiston, Idaho, upon the timber claims of the persons whose names are enumerated on the back thereof.

PEYTON GORDON.

Subscribed and sworn to before me this 20th day of April, 1911.

A. L. RICHARDSON,
Clerk.

[Endorsed]: Filed April 20, 1911. A. L. Richardson, Clerk. [286]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, THE IDAHO TRUST COMPANY, THE LEWISTON NATIONAL BANK, OF LEWISTON, IDAHO, THE CLEARWATER TIMBER COMPANY, THE WESTERN LAND COMPANY, GEORGE E. THOMPSON, ELIZABETH W. THATCHER, CURTIS THATCHER, ELIZABETH WHITE, EDNA P. KESTER, ELIZABETH KETTENBACH, MARTHA E. HALLETT, KIT-

TIE E. DWYER, POTLATCH LUMBER
COMPANY, ROBERT O. WALDMAN,
Defendants.

**Stipulation [That Cause Against Western Land
Co. be Dismissed].**

STIPULATION.

It is hereby stipulated and agreed between Peyton Gordon, Esquire, solicitor and of counsel for the complainant above named, and Morgan & Morgan, solicitors and counsel for the defendant, the Western Land Company, that the above-entitled cause, as against and in so far as it affects the said defendant, The Western Land Company, and in so far as it affects a tract of land described as the west half of the northwest quarter, the northeast quarter of the northwest quarter, and the northwest quarter of the northeast quarter, of section ten, in township thirty-six north of range five east, Boise meridian, be dismissed. [287]

PEYTON GORDON,

Solicitor and of Counsel for the Complainant.

MORGAN & MORGAN,

Solicitors and of Counsel for the Defendant, The
Western Land Company.

[Endorsed]: Filed May 18, 1911. A. L. Richardson, Clerk. [288]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NA-
TIONAL BANK, OF LEWISTON, IDAHO,
THE CLEARWATER TIMBER COM-
PANY, THE WESTERN LAND COM-
PANY, GEORGE E. THOMPSON, ELIZA-
BETH W. THATCHER, CURTIS
THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KET-
TENBACH, MARTHA E. HALLETT, KIT-
TIE E. DWYER, POTLATCH LUMBER
COMPANY, ROBERT O. WALDMAN,

Defendants.

**Order [or Decree Dismissing Suit Against Western
Land Co. in so Far as It Affects Certain Lands].**

ORDER.

Pursuant to a stipulation made and entered into
by and between Peyton Gordon, Esquire, solicitor
and of counsel for the complainant above named, and
Morgan & Morgan, solicitors and of counsel for the
above-named defendant, The Western Land Com-
pany, and filed in this court on the 18 day of May,

1911, that the above-entitled suit, as against and in so far as it affects the said defendant, The Western Land Company, and in so far as it affects a tract of land described as the west half of the northwest quarter, the northeast quarter of [289] the northwest quarter, and the northwest quarter of the northeast quarter, of section ten, in township thirty-six north of range five east, Boise meridian, be dismissed;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, and this does order, adjudge and decree, that the above-entitled suit, as against and in so far as it affects the defendant, The Western Land Company, and in so far as it affects a tract of land described as the west half of the northwest quarter, the northeast quarter of the northwest quarter, and the northwest quarter of the northeast quarter, of section ten, in township thirty-six north of range five east, Boise meridian, be and the same hereby is dismissed.

Dated this 19 day of May, 1911.

FRANK S. DIETRICH,
Judge.

[Endorsed:] Filed May 19, 1911. A. L. Richardson, Clerk. [290]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—Nos. 388-406-407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH and Others.
Defendants.

Stipulation [Concerning Taking of Testimony and Evidence].

STIPULATION.

WHEREAS, Special Examiners heretofore have been appointed by the Court to take and hear the testimony in all of the above-entitled causes, and each of said causes charge conspiracy to defraud the United States of certain of its timber lands, and the Bill of Complaint in each of said causes specifically describes the several tracts of land sought to be recovered by the Government, and refers to the several patents sought to be cancelled;

With the view of speeding said causes to a hearing, and for the purpose of economy in the taking of the testimony in said causes, and making of the record in the same for the Court, it is hereby stipulated and agreed by and between the respective parties to the above-entitled causes that the testimony of all of the witnesses of all the parties to the said causes produced and taken before said examiners heretofore appointed, or before any examiners or persons hereafter appointed by said Court, or agreed upon between the parties to these causes to act in such capacity in all of said causes shall be considered as having been taken in each and all of said causes, and shall go to make up the record in each and all of said causes, with the same force and effect as though said causes were consolidated, subject, however, to the defendants' objection made at the time of the introduction of any evidence so offered that the same is incompetent, irrelevant and immaterial.

It is further stipulated by and between the parties to said causes that the evidence offered by and on behalf of any of said parties in any of said causes shall be considered as offered and [291] received in evidence in all of said causes unless at the time of the offering of said evidence the party so offering the same shall specifically specify as to which of said causes the same is offered.

(Signed:) PEYTON GORDON,
Special Assistant to the Attorney General, Solicitor
for Complainant.

JAMES E. BABB,
Solicitor for Lewiston National Bank, Idaho Trust
Company, Potlatch Lumber Company, Clear-
water Timber Company, Frank W. Kettenbach,
Defendants.

GEO. W. TANNAHILL,
Solicitor for William F. Kettenbach, George H. Kes-
ter, William Dwyer, Elizabeth White, Edna P.
Kester, Martha E. Hallett, Kittie E. Dwyer, De-
fendants.

MORGAN & MORGAN,
Solicitors for Western Land Company, Defendant.

EUGENE A. COX,
Solicitor for Elizabeth Kettenbach, Curtis Thatcher,
Elizabeth W. Thatcher, and Elizabeth White,
Defendants. [292]

*In the District Court of the United States for the
District of Idaho, Central Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

Decree.

The above-entitled cause coming on to be heard before the Court, the complainant appeared by its counsel, Peyton Gordon, Esq., and the defendants by James E. Babb, Esq., George W. Tannahill, Esq., and Eugene E. Cox, Esq., their solicitor and counsel and the Court having heard the arguments of counsel for the parties respectively, and having taken the cause under advisement, and having on the twenty-first day of March, 1912, rendered and filed its opinion, and now being fully advised:

It is now, by the Court, ordered, adjudged and decreed that those certain patents issued by the United States of America, to Guy L. Wilson, bearing date on the 31st day of December, A. D. 1904, and to Frances A. Justice, bearing date on the 31st day of December, A. D. 1904, and to Robert O. Waldman, bearing date on the 3d day of August, A. D. 1904, wherein and whereby there was granted by the United States to the said Guy L. Wilson, Frances A. Justice and Robert O. Waldman, respectively, the following described lands situate in the County of Nez Perce in the State of Idaho, to wit:

Lots numbered three and four, the northeast quarter of the southwest quarter and the northwest [293] quarter of the southeast quarter of section nineteen in township thirty-nine north of range five east of Boise meridian, in Idaho, containing one hundred and fifty-eight acres and five hundredths of an acre.

Lots numbered three and four and the east half of the southwest quarter of section nineteen in township thirty-eight, north of range six, east of Boise meridian, in Idaho, containing one hundred and fifty-seven acres and eighty hundredths of an acre.

Lots numbered two, three, six and seven of section thirty in township thirty-eight, north of range two, east of Boise meridian, in Idaho, containing one hundred and fifty acres and forty hundredths of an acre.

are and at all times since their issuance have been null and void; and the said defendants are hereby commanded to deliver the same to the Clerk of this Court, to be cancelled; and it is hereby ordered and directed that when the same are so surrendered to the said Clerk, he shall mark the same as cancelled pursuant to this decree; and it is further adjudged and decreed that the said lands are and at all times have been the property of the complainant, the United States of America, and that title to the same is hereby in it quieted; and the said defendants, and each of them, are hereby adjudged to have no right or title to the said lands, or any portion of the same, and they and each of them are hereby commanded

absolutely to desist and refrain from making or asserting any claim or right, in or to the same or in any part thereof.

The patents hereinabove referred to are in the words and figures as follows, to wit: [294]

“142.

Certificate)

No. 4770)

THE UNITED STATES OF AMERICA,
To All of Whom These Presents Shall Come,
GREETING:

WHEREAS, Guy L. Wilson of Asotin County, Washington, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Lewiston, Idaho, whereby it appears that full payment has been made by the said Guy L. Wilson, according to the provisions of the Acts of Congress of the 24th day of April, 1820, entitled ‘An Act making further provisions for the sale of the Public Lands’ and the Acts supplemental thereto, for the Lots numbered three and four, the Northeast quarter of the Southwest quarter and the Northwest quarter of the Southeast quarter of Section nineteen, in Township thirty-nine, North of Range five East of Boise Meridian, in Idaho, containing one hundred and fifty-eight acres and five hundredths of an acre, according to the Official Plat of the Survey of the said Lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said Guy L. Wilson.

NOW KNOW YE, That the United States of America, in consideration of the premises, and in

conformity with the several Acts of Congress in such case made, and provided, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT unto the said Guy L. Wilson, and to his heirs the said Tract above described. TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging unto the said Guy L. Wilson and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted as provided by law. And there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF I, THEODORE ROOSEVELT, President of the United States of America, have caused these letters to be made Patent and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand at the City [295] of Washington, the thirty-first day of December, in the year of our Lord one thousand nine hundred and four and of the Independence of the United States

the one hundred and twenty-ninth.

[Seal] By the President: T. ROOSEVELT,

By F. M. McKEAN,

Secretary.

C. H. BRUSH,

Recorder of the General Land Office."

"143.

Certificate)

No. 4771)

THE UNITED STATES OF AMERICA,

To All to Whom These Presents Shall Come,

GREETING:

WHEREAS, Frances A. Justice of Asotin County, Washington, has deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Lewiston, Idaho, whereby it appears that full payment has been made by the said Frances A. Justice, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled 'An Act making further provisions for the sale of the Public Lands,' and the Acts supplemental thereto, for the Lots numbered three and four and the East half of the Southwest quarter of Section nineteen, in Township thirty-eight, North of Range Six East of Boise Meridian, in Idaho, containing one hundred and fifty-seven acres and eighty hundredths of an acre, according to the Official Plat of the Survey of the said Lands, returned to the General Land Office by the Surveyor General which said Tract has been purchased by the said Frances A. Justice.

NOW KNOW YE, That the United States of

America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT unto the said Frances A. Justice and to her heirs, the said Tract above described: TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature, thereunto belonging, unto the said Frances A. Justice and to her heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law. And there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF I, THEODORE ROOSEVELT, President of the United States of America, has caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United [296] States

the one hundred and twenty-ninth.

[Seal] By the President: T. ROOSEVELT,

By F. M. McKEAN,

Secretary.

C. H. BRUSH,

Recorder of the General Land Office.”

“182

Certificate)

No. 4365)

THE UNITED STATES OF AMERICA,

To All to Whom These Presents Shall Come,

GREETING:

WHEREAS, Robert O. Waldman of Nez Perce County, Idaho, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Lewiston, Idaho, whereby it appears that full payment has been made by the said Robert O. Waldman, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled ‘An Act making further provision for the sale of the Public Lands,’ and the acts supplemental thereto, for the Lots numbered, two, three, six and seven of Section thirty in Township thirty-eight, North of Range two East of Boise Meridian, in Idaho, containing one hundred and fifty acres and forty hundredths of an acre, according to the Official Plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said Robert O. Waldman.

NOW KNOW YE, That the United States of America in consideration of the premises and in con-

formity with the several Acts of Congress in such case made and provided, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT unto the said Robert O. Waldman and to his heirs, the said Tract above described. TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature, thereunto belonging, unto the said Robert O. Waldman and to his heirs and assigns, forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law, and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, THEODORE ROOSEVELT, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand at the City of Washington, the third day of August, in the year of our Lord one thousand nine hundred and four, and of the In-

dependence of the United States the one hundred and twenty-ninth.

[Seal] By the President: T. ROOSEVELT.

By F. M. McKEAN,

Secretary.

C. H. BRUSH,

Recorder of the General Land Office."

And it is further adjudged and decreed that the said bill is hereby dismissed as to all the other [297] claims and entries therein specified and set out, and that neither party recover costs.

Done in open court this 15th day of April, 1912.

By the Court,

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed April 15, 1912. A. L. Richardson, Clerk. [298]

In the District Court of the United States for the District of Idaho, Central Division.

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH and Others,

Defendants.

Petition for Appeal.

To the Judge of the District Court of the United States, for the District of Idaho:

Your petitioner, the United States of America, the complainant in the above-entitled cause, lately

pending in the court above named, respectfully represents and shows that in said cause there was entered at the February term of said court in the year 1912, on the 15th day of April, 1912, a final decree greatly to the prejudice and injury of your said petitioner, and which said decree is erroneous and inequitable in many particulars, some of which are specified and assigned as errors by your said petitioner in an assignment of errors lately filed by your said petitioner in the said cause, in the office of the Clerk of said Court.

Wherefore, to the end that your said petitioner may obtain relief in the premises and have opportunity to show the said errors complained of, and that the said errors may be corrected, your petitioner prays that it may be allowed in the said cause an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, [299] from all of said decree.

Except so much and such parts of the same as order and adjudge that the certain patents issued by the United States of America to Guy L. Wilson bearing date on the 31st day of December, A. D. 1904, and to Frances A. Justice bearing date on the 31st day of December, A. D. 1904, and to Robert O. Waldman bearing date on the 3d day of August, A. D. 1904, and granting to the said Wilson, Justice and Waldman the lands described therein respectively are, and at all times since their issuance have been, null and void; and

Except also so much and such parts of said decree as commands the defendants to deliver said patents

to the Clerk of this Court to be canceled, and orders and directs said Clerk to mark the same canceled; and

Except also so much and such parts of said decree as adjudge that said lands are, and at all times have been the property of your petitioner, and that the title to the same is in it quieted; and adjudges that said defendants, and each of them, have no right or title to said lands or any portion of the same; and command said defendants and each of them absolutely to desist and refrain from making or asserting any claim or right in or to the same or any part thereof, and that proper orders to the allowance of such an appeal may be made by this court.

GEO. W. WICKERSHAM,

Attorney General of the United States,

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitors for Complainant.

[Endorsed]: Filed Sept. 16, 1912. A. L. Richardson, Clerk. [300]

*In the District Court of the United States for the
District of Idaho, Central Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH and Others,

Defendants.

Assignment of Errors.

Now comes the United States of America, the complainant in the above-entitled cause, and, with a view to the obtaining and the prosecution of an appeal from the decree lately entered in the said cause in the court above named, files this the said complainant's assignment of errors in the said decree, as stating and designating the errors in said decree, upon which the said complainant intends to rely in such prosecution of the said appeal.

And the said complainant assigns for such errors and says that the said United States District Court in rendering and entering the said decree erred in these matters and things, that is to say:

I. That the Court erred in dismissing the bill of complaint filed by said complainant in the said cause as to all the claims and entries therein specified except those of Guy L. Wilson, Frances A. Justice and Robert O. Waldman, as to which said three claims and entries the prayer in complainant's bill of complaint was granted. [301]

II. That the said Court erred in not granting by decree appropriate to that end the relief prayed by the said complainant in the bill of complaint as amended filed by the said complainant in said cause.

III. That the said Court erred in failing to find from the evidence in said cause that the defendants Kester, Kettenbach, Dwyer and Robnett named in the said bill of complaint as amended had conspired among themselves, with each other, and with divers other persons named therein, and named and indi-

cated in the evidence, to defraud the United States in the manner and for the purposes stated and charged in said bill of complaint as amended, and that the said defendants did so defraud the United States in such manner and in respect of the lands of the United States designated and described in the said bill.

IV. That the said Court erred in finding and in holding in effect that the titles to the lands designated and described in said bill of complaint as amended, with the exception of the lands described in the entries and claims of Guy L. Wilson, Frances A. Justice, Robert O. Waldman, Drury M. Gammon and Joel H. Benton, were obtained from the United States in accordance with law and without fraud, and that the titles to all of said lands, with the exception of the lands described in the entries and claims of the said Wilson, Justice and Waldman are valid in the defendants holding the title thereto.

V. That the said Court erred in finding that the defendant, the Lewiston National Bank, took the title to the land contained in the entry and claim of the said Drury M. Gammon without any notice of its infirmity; [302] and in holding in effect that the defendant, the Lewiston National Bank, purchased the land designated and described in said claim and entry under such circumstances as constituted the said defendant, the Lewiston National Bank, an innocent purchaser of the said land in good faith, for value and without knowledge or notice of any fraud or illegality in the title to said land.

VI. That the said Court erred in finding that

while the question whether the defendant, the Clearwater Timber Company, was an innocent purchaser was not entirely free from doubt that said company did not have such knowledge of the circumstances under which the entry and claim of Joel H. Benton was made, or such notice of the claims of the Government as to put it upon inquiry; and in holding in effect that the defendant, the Clearwater Timber Company, purchased the land designated and described in said claim and entry under such circumstances as constituted said defendant, the Clearwater Timber Company, an innocent purchaser of the said land in good faith, for value and without knowledge or notice of any fraud or illegality in the title to said land.

VII. That the said Court erred in finding and in holding that there is no substantial evidence to support the contention that the entrymen William E. Helkenberg, William Haevernick, Alma Haevernick and Gary Vanartsdalen, violated any provision of law in acquiring the title to the entries and claims made by them, respectively, and described and designated in complainant's bill of complaint as amended.

VIII. That the said Court erred in finding and in holding that the evidence is wholly insufficient to warrant a cancelation of the patents issued for and upon [303] the entries and claims of the defendants Edna P. Kester, Elizabeth Kettenbach, William J. White, Elizabeth White, Mamie P. White and Martha E. Hallett, described and designated in complainant's bill of complaint as amended; and that the evidence goes little further than to suggest a sus-

picion of invalidity of said claims and entries based largely upon the intimate relations existing between the several entrymen and the defendants Kettenbach and Kester.

IX. That the said Court erred in finding and in holding that while the conditions surrounding the transfer of the claims and entries of Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, James C. Evans and Joseph B. Clute, respectively, described and designated in complainant's bill of complaint as amended, are of such a nature as to warrant a close scrutiny of the claims, the circumstances are quite as readily reconcilable with the theory of the lawfulness as with the theory of unlawfulness of the relations existing between the several entrymen and Emory and Colby (who procured said entrymen to initiate and make said entries), and that the evidence is insufficient to warrant a cancellation of any one of the patents issued for said entries.

X. That the said Court erred in finding and in holding that the evidence is insufficient to warrant the cancellation of the patent issued upon the claim and entry of William B. Benton, described and designated in complainant's bill of complaint as amended.

XI. That the said Court erred in finding and in holding that while certain features of the evidence present a suspicious circumstance, that either said circumstance, [304] or all the evidence taken together, is not sufficient to warrant a finding that the patent issued for the entry and claim of Hattie Row-

land, described and designated in said complainant's bill of complaint as amended, was procured by fraud, or that any one of the defendants acquired any interest in, or had any control over, the said claim and entry prior to final proof.

XII. That the said Court erred in finding that under the evidence the entryman, William McMillan, did not have any understanding, expressed or implied, by which he was to sell the land contained in his claim and entry described and designated in said complainant's bill of complaint as amended, to any person, and that no other person had any interest in the said entry; and in holding in effect said entry to be valid.

XIII. That the said Court erred in finding that the record discloses little, if any, evidence tending to impeach the validity of the claim and entry of Pearl Washburn, described and designated in complainant's bill of complaint as amended and in effect holding the entry to be valid.

XIV. That the said Court erred in finding that there is little substantial proof tending to show fraud in the entry and claim of Daniel W. Greenburg, described and designated in complainant's bill of complaint as amended; and in holding in effect said entry to be valid.

XV. That the said Court erred in finding and in holding that the evidence is insufficient to warrant the cancellation of the entries and claims of George Morrison and Edward M. Hyde, respectively, described and designated in complainant's bill of complaint as amended; and that in effect said entries and

claims are valid. [305]

XVI. That the said Court erred in finding and in holding that the evidence is insufficient to warrant the cancellation of the patents issued for the entries and claims of John E. Nelson and Van V. Robertson, respectively, described and designated in complainant's bill of complaint as amended.

XVII. That the said Court erred in finding and in holding the claims and entries of Soren Hansen and David S. Bingham, respectively, described and designated in complainant's bill of complaint, to be valid.

XVIII. That the said Court erred in finding and in holding that the preponderance of the evidence is against the theory that the defendants, Kester, Kettenbach and Dwyer, were jointly interested in the acquisition of title to the lands involved in this cause, as set out and described in complainant's bill of complaint as amended.

XIX. That the said Court erred in finding and in holding that at no time during the period covered by the transactions complained of in this cause was there any associational arrangement, either by way of partnership, or joint ownership, or otherwise, between the defendants, Kester, Kettenbach and Dwyer, or any one of them, and the defendant Robnett in the acquisition of the title to any of the lands involved in this cause as set out and described in complainant's bill of complaint as amended.

XX. That the said Court erred in finding and in holding that the defendant Dwyer had no joint or partnership interest with the defendants Kettenbach

and Kester, or either of them, in the lands involved in this cause which the latter purchased, as set out and described in [306] complainant's bill of complaint as amended.

XXI. That the said Court erred in finding and in holding, that neither Kester nor Kettenbach had any interest in the lands involved in this cause taken in the name of the defendant, Kittie E. Dwyer, described and set out in complainant's bill of complaint as amended.

XXII. That the said Court erred in failing to hold, upon a finding of facts appropriate thereto and properly to be made upon the evidence herein that the entries and claims of James C. Evans, Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Daniel W. Greenburg, David S. Bingham and William E. Helkenburg designated and described in complainant's bill of complaint as amended were made and entered in fraud of the United States, and in fraud of the laws of the United States relating to such matters, and are invalid and voidable at the suit of the United States, and that the defendant, The Idaho Trust Company, which holds the title to the lands contained in said claims and entries took title to the same with full notice and knowledge of the invalidity of said entries and claims and now holds the same in trust for, and to the use of the defendants, Kester and Kettenbach, all in the manner stated and charged in said bill of complaint.

XXIII. That the said Court erred in failing to hold, upon a finding of facts appropriate thereto and

properly to be made upon the evidence herein, that the claims and entries of William McMillan and Hattie Rowland, designated and described in complainant's bill of complaint as amended, were made and entered in fraud of the United States *and in fraud of the United States* and in fraud [307] of the laws of the United States relating to such matters and are invalid and voidable at the suit of the United States, and that the defendant, the Idaho Trust Company, which holds the title to the lands contained in said claims and entries, took the title to the same with notice and full knowledge of the invalidity of said entries and claims, and now holds the same in trust for, and to the use of the said defendants, Kester, Kettenbach, Dwyer and Robnett, all in the manner stated and charged in the said bill of complaint.

XXIV. That the said Court erred in failing to hold, upon a finding of facts appropriate thereto and properly to be made upon the evidence herein, that the entry and claim of Van V. Robertson, designated and described in complainant's bill of complaint as amended, was made and entered in fraud of the United States, and in fraud of the laws of the United States, and is invalid and voidable at the suit of the United States, and that the defendant, the Lewiston National Bank, which now holds the title to said claim and entry and to the claim and entry of Drury M. Gammon, hereinbefore mentioned, took the title to the lands contained in the said claims and entries with notice and knowledge of the invalidity thereof, and holds the same in trust for, and to the use of the

defendants, Kester, Kettenbach, Dwyer and Robnett, all in the manner stated and charged in said bill of complaint.

XXV. That the said Court erred in failing to hold, upon a finding of facts appropriate thereto and properly to be made upon the evidence herein, that the claims and entries of William B. Benton, Pearl Washburn, William Haevernick, Alma Haevernick, and *Gary* Vanartsdalen [308] designated and described in complainant's bill of complaint as amended, were made and entered in fraud of the United States and in fraud of the laws of the United States relating to such matters, and are invalid and voidable at the suit of the United States, and that the defendant, the Clearwater Timber Company, which now holds the title to the said claims and entries, and to the claim and entry of Joel H. Benton, hereinbefore referred to, took the title to the lands contained in said claims and entries with full knowledge and notice and information concerning the invalidity of said claims and entries, and well knowing that the said entries and the titles issued thereon were unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States, all in the manner stated and charged in said bill of complaint.

XXVI. That the said Court erred in failing to hold, upon a finding of facts appropriate thereto and properly to be made upon the evidence herein, that the entry and claim of John E. Nelson, designated and described in complainant's bill of complaint as amended, was made and entered in fraud of the United States, and in fraud of the laws of the United

States relating to such matters, and is invalid, and voidable at the suit of the United States, and that the defendant, Elizabeth W. Thatcher, who now holds the title to the land contained in said claim and entry, took the same with full knowledge, notice, and information of the invalidity of the title to said entry well knowing said entry and the title issued thereon to be unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States, all in the manner stated and charged in said bill of complaint. [309]

XXVII. That the said Court erred in failing to hold, upon a finding of facts appropriate thereto and properly to be made upon the evidence herein, that the claim and entry of Soren Hansen, designated and described in complainant's bill of complaint as amended, was made and entered in fraud of the United States, and in fraud of the laws of the United States relating to such matters, and that the defendant, William F. Kettenbach, in whom the title to said claim and entry now vests took the same with full knowledge, notice and information concerning the invalidity of said entry, and well knowing said entry and the title issued thereupon were unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States.

XXVIII. That the said Court erred in failing to hold upon a finding of facts appropriate thereto and properly to be made upon the evidence herein, that the claims and entries of William J. White and Mamie P. White, designated and described in complainant's bill of complaint as amended, were made and entered in fraud of the United States, and in

fraud of the laws of the United States relating to such matters, and that the defendant, Elizabeth White, who now holds the title to the lands contained in said claims and entries, took the same with full knowledge, notice and information concerning the invalidity of said claims and entries, and well knowing that the said entries, and the titles issued thereupon were unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States, all in the manner stated and charged in the said bill of complaint. [310]

XXIX. That the said Court erred in failing to hold, upon a finding of facts appropriate thereto and properly to be made upon the evidence herein, that the claims and entries of the defendants, Edna P. Kester, Elizabeth White, Elizabeth Kettenbach, and Martha E. Hallett, designated and described in complainant's bill of complaint as amended, were made and entered by said last mentioned defendants in fraud of the United States, and in fraud of the laws of the United States relating to such matters, and that the title to the lands contained in said claims and entries is now vested, respectively, in said defendants, and that each of said defendants holds the title, respectively, to said claims and entire in trust for the defendants, Kester, Kettenbach, Dwyer and Robnett, all in the manner stated and charged in said bill of complaint.

XXX. That the said Court erred in failing to hold, upon a finding of facts appropriate thereto and properly to be made upon the evidence herein, that

the claim and entry of Joseph B. Clute, designated and described in complainant's bill of complaint as amended, was made and entered in fraud of the United States, and in fraud of the laws of the United States relating to such matters and are invalid and voidable at the suit of the United States, and that the defendant, the Idaho Trust Company, which now holds the title to the land contained in said claim and entry took the same with full knowledge, notice and information concerning the invalidity of said entry, and well knowing that the said entry and claim and the title issued thereupon were unlawful, corrupt, fraudulent, invalid and voidable at the suit of the United States, all in the manner [311] stated and charged in said bill of complaint.

XXXI. That the said Court erred in failing to find and to hold that the tracts of land designated and described in complainant's bill of complaint as amended, and were severally entered by the several persons, respectively, making entry thereof, under and in pursuance of unlawful agreements, contracts, arrangements and understandings theretofore, and prior to the several dates of the said entries, made and entered into by and between the said several persons so making entries of the said lands, and the defendants or some of said defendants, whereby, and in virtue of which said unlawful agreements, contracts, arrangements and understandings, the said entries were made in the interest and for the benefit of said defendants, or some of them, and the said lands so entered were agreed, bargained and arranged to be conveyed to the said defendants, or to some of

them, all in the manner stated and charged in the said bill of complaint.

XXXII. That the said Court erred in failing to hold, upon a finding of facts appropriate thereto and properly to be made upon the evidence herein, that the titles to all of the land involved herein were acquired in fraud of the United States and were and are invalid and voidable at the suit of the United States in this, and for the reason namely, that the defendants, Kester, Kettenbach, Dwyer and Robnett intended to acquire the said lands, and did in fact acquire an interest therein, under, through and in pretended accordance with the statutes of the United States relating to such matters, and in quantities and to an aggregate area greatly in excess of the [312] quantities and areas which the said defendants, or any or all of them, were entitled to acquire under and by virtue of the said statutes, all in the manner stated and charged in complainant's bill of complaint as amended.

XXXIII. That the said Court erred in failing to hold, upon a finding of facts appropriate thereto and properly to be made upon the evidence herein, that the titles to the lands herein involved were acquired in fraud of the United States and in fraud of the laws of the United States, were and are invalid and voidable at the suit of the United States, in this and for this reason, namely that the said titles were acquired by the defendants in whom the titles to said lands are now vested with full knowledge, notice and information that the entries containing said lands were made under and in professed accordance with the

laws of the United States, which entries were by said defendants, Kettenbach, Kester, Dwyer and Robnett, caused and procured to be made by means of solicitations, by offers and assurances of advantage to the several persons making such entries and other means and methods of procurement, employed by the said defendants, Kettenbach, Kester, Dwyer and Robnett, for the purpose of causing such entries to be made in greater number than otherwise and without such procurement entries would be made, and with the intent and to the end that thereby a greater number of such entries should be made and a larger area of public land should be rendered subject to be acquired by the said defendants, Kettenbach, Kester, Dwyer and Robnett.

GEO. W. WICKERSHAM,
Attorney General of the United States,
PEYTON GORDON,
Special Assistant to the Attorney General,
Solicitors for Complainant.

[Endorsed]: Filed Sept. 16, 1912. A. L. Richardson, Clerk. [313]

*In the District Court of the United States for the
District of Idaho, Central Division.*

IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH and Others,
Defendants.

Order Allowing Appeal.

This day came the United States of America, the complainant in the above-entitled cause, and presented its petition for an appeal and an assignment of errors accompanying the same, which petition, upon consideration of the Court, is hereby allowed, and the Court allows an appeal to the United States Circuit Court of Appeals for the Ninth Circuit as prayed in said petition.

Sept. 23d, 1912.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed Sept. 23, 1912. A. L. Richardson, Clerk. [314]

**[Order Allowing Withdrawal of Original Exhibits
for Use on Appeal.]**

*In the District Court of the United States, for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406, 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH et al.,
Defendants.

**ORDER PERMITTING OF WITHDRAWAL OF
EXHIBITS.**

It is hereby ordered, that the following original exhibits, to wit: Plaintiff's Exhibits 6s, 6u, 6t, 80, 84, 85, 104, 105, 106, 118, 119, 120; and Defendant's

Exhibits "B-1," "A," "B," "C," "D," "Y," "Z," and "A-1," (affidavit of Effie A. Jolley); and "A-2," "F-1," "H-1," "I-1," "L-1," "M-1," offered in evidence at the trial of said causes, be allowed to be withdrawn from the files of this court, for the purpose of being transmitted to the United States Circuit Court of Appeals for the Ninth Circuit as a part of the record on appeal to the said United States Circuit Court of Appeals, in these causes, to be returned to the Clerk of this Court, upon the termination of said appeal.

Dated at Boise, Idaho, December 2, 1912.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed December 2d, 1912. A. L. Richardson, Clerk. [315]

**[Stipulation Concerning Memoranda and Abstract
of Exhibits.]**

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

UNITED STATES OF AMERICA,

Complainant,

vs.

W. F. KETTENBACH et al.,

Defendants.

IN EQUITY—No. 406.

UNITED STATES OF AMERICA,
Complainant,

vs.

W. F. KETTENBACH et al.,
Defendants.

IN EQUITY—No. 407.

UNITED STATES OF AMERICA,
Complainant,

vs.

W. F. KETTENBACH et al.,
Defendants.

It is hereby stipulated by and between the parties to the above-entitled causes that the memoranda and abstract of the exhibits in said causes, hereto attached, consisting of pages numbered consecutively from 1 to 321, shall have the same force and effect as though said exhibits were copied in full in the transcript of the record of said causes on appeal to the Circuit Court of Appeals for the Ninth Circuit, provided, however, that any party claiming any error or omission in the said memoranda and abstract, or desiring to have any original document heretofore offered in evidence in any of said causes submitted to said Circuit Court of Appeals, may without application to said Court of Appeals have any such original document sent by the Clerk to the Clerk of said Court of Appeals, and any such claimed error or omission shown by a copy certified by the [316] Clerk below and filed with the Clerk of said Court of Appeals,

with two copies thereof and a copy thereof served personally or by U. S. mail on the adverse party, and that any matter so supplied shall have like effect as if supplied on order of said Court of Appeals.

Dated this 12th day of December, A. D. 1912.

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitor for Complainant.

GEO. W. TANNAHILL,

Solicitor for Defendants William F. Kettenbach,
George H. Kester, William Dwyer, Elizabeth
White, Edna P. Kester, Martha E. Hallett and
Kittie E. Dwyer.

JAMES E. BABB,

Solicitor for Defendants, Clearwater Timber Com-
pany, Lewiston Nat'l Bank, Idaho Trust Com-
pany and F. W. Kettenbach.

EUGENE A. COX.

CLARENCE W. ROBNETT,

Defendant.

[Endorsed]: Filed Dec. 14, 1912. A. L. Richard-
son, Clerk. [317]

[Marshal's Return on Citation on Appeal.]

United States of America,
District of Idaho,
Central Division,—ss.

I hereby certify that I served the within and fore-
going Citation upon William Dwyer, Curtis Thatcher
and Kitty E. Dwyer, Sept. 26th, 1912, and on Eliz-
abeth W. Thatcher and Elizabeth White, Sept. 27th

1912, and on William F. Kettenbach October 1st, 1912, at Lewiston, Nez Perce County, in the District of Idaho, Central Division, by then and there delivering to the said William Dwyer, Curtis Thatcher, Kitty E. Dwyer, Elizabeth W. Thatcher, Elizabeth White and William F. Kettenbach personally a true copy of the within Citation.

And I further certify that I served the within Citation on The Lewiston National Bank, a corporation, on the 26th day of Sept., 1912, by then and there delivering to William Thompson, Cashier of The Lewiston National Bank, a corporation, at Lewiston, Nez Perce County, District of Idaho, Central Division, personally, a true copy of the within Citation.

And I further certify that I served the within Citation on The Idaho Trust Company, a corporation, on the 27th day of Sept., 1912, by then and there delivering to R. L. Sheppard, Secretary and Treasurer of The Idaho Trust Company, a corporation, at Lewiston, Nez Perce County, in the District of Idaho, Central Division, personally, a true copy of the within Citation.

And I further certify that I served the within Citation on The Clearwater Timber Company, a corporation, on the 3d day of October, 1912, by then and there delivering to Theodore Fohl, Statutory agent of The Clearwater Timber Company, a corporation, at Orofino, Clearwater County, in the District of Idaho, Central Division, personally, a true copy of the within Citation.

And I further certify that I served the within

Citation on George W. Tannahill, James E. Babb and Eugene A. Cox, attorneys for the defendants, on the 26th day of Sept., 1912, at Lewiston, Nez Perce County, District of Idaho, Central Division, by then and there delivering to the said George W. Tannahill, James E. Babb and Eugene A. Cox, personally, a true copy of the within Citation.

And I further certify that after due search and diligent inquiry I have been unable to find George H. Kester, Clarence W. Robnett, Edna P. Kester, Elizabeth Kettenbach and Martha E. Hallett within the District of Idaho.

Dated at Lewiston, in the District of Idaho, Central Division, this 4th day of October, 1912.

S. L. HODGIN,

U. S. Marshal.

By Wm. Schuldt,

Deputy. [318]

*In the District Court of the United States Within
and for the District of Idaho, Central Division.*

IN EQUITY—#406.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, a Corporation, THE LEWIS-
TON NATIONAL BANK, a Corporation,
THE CLEARWATER TIMBER COM-
PANY, a Corporation, ELIZABETH W.

THATCHER, CURTIS THATCHER,
ELIZABETH WHITE, EDNA P. KES-
TER, ELIZABETH KETTENBACH, MAR-
THA E. HALLETT, and KITTY E.
DWYER,

Defendants.

Citation [on Appeal].

CITATION.

United States of America,—ss.

The President of the United States, to William F. Kettenbach, George H. Kester, Clarence W. Robnett, William Dwyer, The Idaho Trust Company, a corporation, The Lewiston National Bank, a corporation, The Clearwater Timber Company, a corporation, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, and Kitty E. Dwyer, and to George W. Tannahill, James E. Babb, and Eugene A. Cox, of Lewiston, Idaho, their Attorneys, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the [319] clerk's office of the District Court of the United States, within and for the District of Idaho, Central Division, wherein the United States of America is plaintiff, and you, William F. Kettenbach, George H. Kester, Clarence W. Robnett, William Dwyer, The Idaho Trust Company, a cor-

poration, The Lewiston National Bank, a corporation, The Clearwater Timber Company, a corporation, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, and Kitty E. Dwyer, are the defendants in error, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable FRANK S. DIETRICH, Judge of the United States District Court in and for the Central Division, District of Idaho, this 23d day of September, A. D. 1912.

FRANK S. DIETRICH,

District Judge.

[Seal]

Attest: A. L. RICHARDSON,

Clerk.

Service of the within Citation and receipt of a copy thereof admitted this 14th day of Oct., 1912.

CLARENCE W. ROBNETT,

.....,

.....,

Attorneys for Defendants and Respondents.

Received a copy hereof from Wm. Schuldt, Deputy U. S. Marshal, Sept. 26, 1912.

JAMES E. BABB,

Solr. and of Counsel for Idaho Trust Co., L. Ntl. Bk., Clearwater T. Co., Potlatch Lbr. Co., and F. W. Kettenbach.

EUGENE A. COX.

GEO. W. TANNAHILL. [320]

United States of America,
District of Idaho,
Central Division,—ss.

I hereby certify that I served the within and fore-
going Citation upon
on the day of, 1912, at
.....
in the District of Idaho, Central Division, by then
and there delivering to the said.....
personally a true copy of the within Citation.

And I further certify that I served the within
Citation on.....
Attorneys for the Defendants, on the day of
....., 1912, at Lewiston, County of Nez Perce,
District of Idaho, Central Division, by then and
there delivering to the said.....
personally a true copy of the within Citation.

Dated at Lewiston, in the District of Idaho, Cen-
tral Division, this day of, 1912.

.....,
United States Marshal.

By [321]

[Endorsed]: No. 406. In the District Court of
the United States for the District of Idaho, Central
Division. United States of America vs. William F.
Kettenbach et al. Citation. Filed October 17th,
1912. A. L. Richardson, Clerk. H. Civ. 517 9/24/12.
[322]

Return to Record.

And thereupon it is ordered by the Court that the
foregoing transcript of the record and proceedings in

the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal]

Attest: A. L. RICHARDSON,

Clerk. [323]

**[Certificate of Clerk U. S. District Court to
Transcript of Record, etc.]**

*In the Circuit Court of the United States in and for
the District of Idaho, Northern Division.*

BILL IN EQUITY—No. 406.

THE UNITED STATES OF AMERICA,

Plaintiff in Error,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO TRUST
COMPANY, THE LEWISTON NA-
TIONAL BANK OF LEWISTON, IDAHO,
THE CLEARWATER TIMBER COM-
PANY, THE WESTERN LAND COM-
PANY, GEORGE E. THOMPSON, ELIZA-
BETH W. THATCHER, CURTIS
THATCHER, ELIZABETH WHITE, ED-
NA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, KITTIE
E. DWYER, POTLATCH LUMBER COM-
PANY, ROBERT O. WALDMAN,

Defendants in Error.

United States of America,
District of Idaho,—ss.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript, consisting of pages numbered from 1 to 325, inclusive, to be a full, true and correct copy of the record and proceedings in the said Court in a certain suit in equity therein lately depending, wherein the United States of America is the complainant, and William F. Kettenbach and (George H. Kester, Clarence W. Robnett, William Dwyer, The Idaho Trust Company, The Lewiston National Bank of Lewiston, Idaho, The Clearwater Timber Company, The Western Land Company, George E. Thompson, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. [324] Kester, Elizabeth Kettenbach, Martha E. Hallett, Kittie E. Dwyer, Potlatch Lumber Company, Robert O. Waldman), are defendants, and numbered four hundred six, as the same remain of record and on file in the office of the Clerk of said Court.

I further certify that no testimony, exhibits or opinion of the Court were filed in the case, but the same were filed in the office of the Clerk of said Court in case entitled United States of America vs. William F. Kettenbach and (George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach) and numbered three eighty-eight, which was tried and heard with this case and another case entitled United States of America vs. William F. Kettenbach and (George H. Kester, and William Dwyer), and numbered four hundred seven, in ac-

cordance with the stipulation of the parties to the said three causes, all of which are now on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, a copy of which stipulation is set out in the transcript hereto attached.

In testimony whereof I have hereunto set my hand and affixed the seal of said District Court this sixteenth day of December, A. D. 1912.

[Seal]

A. L. RICHARDSON,

Clerk. [325]

[Endorsed]: No. 2210. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. William F. Kettenbach, George H. Kester, Clarence W. Robnett, William Dwyer, The Idaho Trust Company, a Corporation, The Lewiston National Bank, a Corporation, The Clearwater Timber Company, a Corporation, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, and Kitty E. Dwyer, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Idaho, Central Division.

Filed December 19, 1912.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

**[Order Extending Time to December 19, 1912, to
File Transcript in Circuit Court of Appeals.]**

*In the District Court of the United States Within
and for the District of Idaho, Central Division.*

IN EQUITY—#406.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

On the application of the Acting Attorney General of the United States, for good cause shown, and it further appearing to the Court that the transcript in this cause is voluminous and cannot be prepared within thirty days from and after the signing of the Citation in said cause,

IT IS THEREFORE ORDERED, that the time for filing said transcript in the Circuit Court of Appeals be and is hereby extended sixty days from and after the 20th day of October, A. D. 1912.

Dated this 23d day of September, A. D. 1912.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: No. 406. In the District Court of the United States, District of Idaho, Central Division. The United States of America, Complainant, vs. William F. Kettenbach et al., Defendants. Order Extending Time for Filing Transcript.

[Endorsed]: No. 2210. United States Circuit Court of Appeals for the Ninth Circuit. No. 406. In the District Court of the United States for the District of Idaho. United States of America, Complainant, vs. William F. Kettenbach et al., Defendants. Order Extending Time for Filing Transcript. Filed Oct. 3, 1912. F. D. Monckton, Clerk. Refiled Dec. 19, 1912. F. D. Monckton, Clerk.

**[Order Enlarging Time to December 26, 1912, to File
Record Thereof and to Docket Cause in Circuit
Court of Appeals.]**

*In the District Court of the United States, for the
District of Idaho, Central Division.*

THE UNITED STATES OF AMERICA,

Appellants,

vs.

WILLIAM F. KETTENBACH et al.,

Respondents.

For good cause shown, it is hereby ordered that the time to file the transcript and docket the above-entitled cause in the U. S. Circuit Court of Appeals be and the same is hereby extended and enlarged from the 19th day of December, 1912, to and including the 26th day of December, 1912.

Dated December 19, 1912.

FRANK S. DIETRICH,

Judge.

[Endorsed]: No. 406. In the District Court of the United States, District of Idaho, Central Division. The United States, Appellant, vs. William F. Kettenbach et al., Respondents. Order Extending Time to File Transcript. ———, Clerk.

No. 2210. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to and Including Dec. 26, 1912, to File Record Thereof and to Docket Case. Filed Dec. 23, 1912. F. D. Monckton, Clerk.